TEXAS REGISTER

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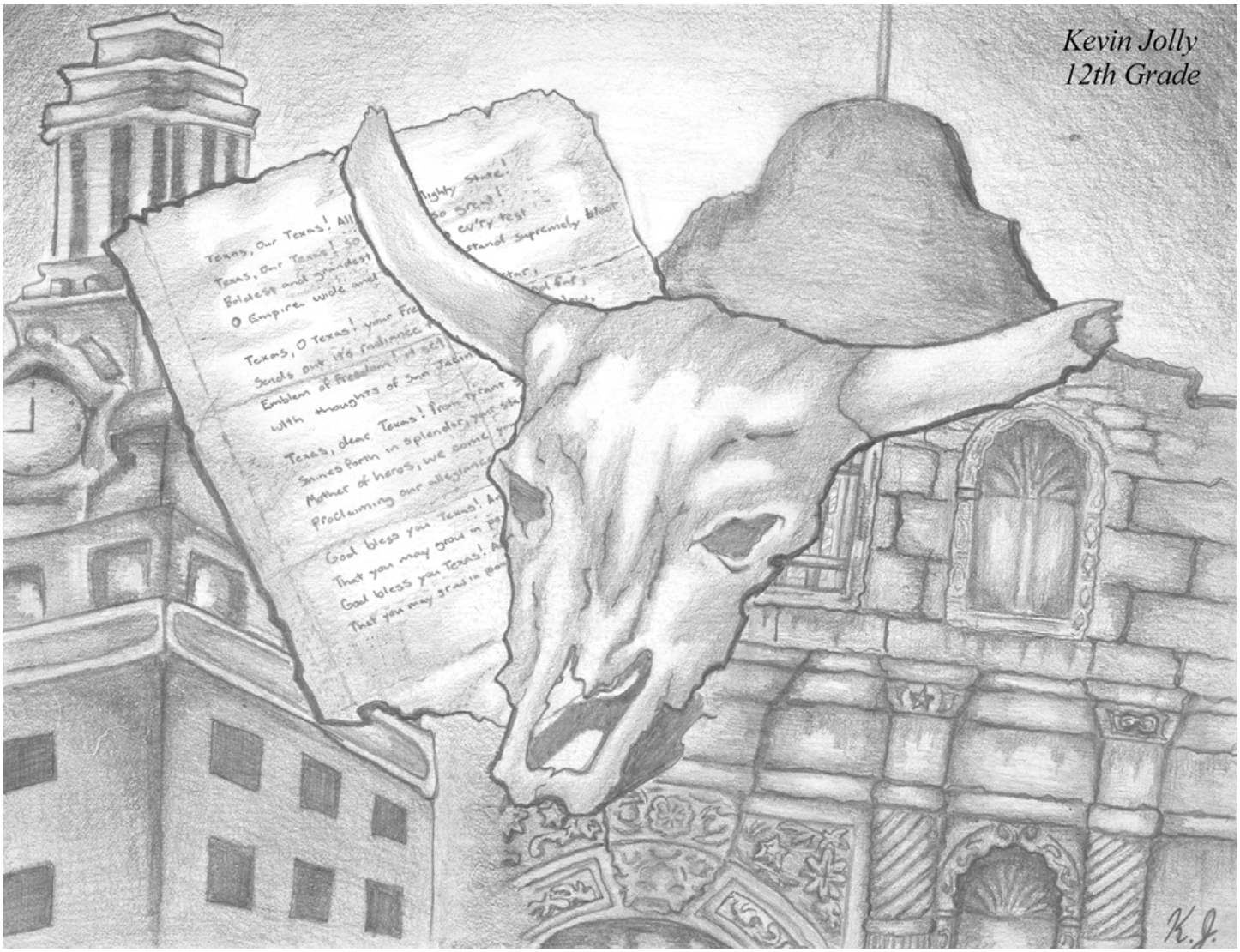

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 28, 2008

Designating David Winstead of Los Fresnos as Presiding Officer of the Lower Rio Grande Regional Review Committee for a term at the pleasure of the Governor. Mr. Winstead is replacing Patrick Marchan of Port Isabel as presiding officer of the board.

Designating James H. Lee of Houston as Presiding Officer of the Teacher Retirement System of Texas Board of Trustees for a term at the pleasure of the Governor. Mr. Lee is replacing Jarvis Hollingsworth of Sugar Land as presiding officer.

Appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2011, Oscar H. Fogle of Lockhard (replacing John P. Schneider of Lockhart whose term expired).

Appointed to the North East Texas Regional Mobility Authority for a term to expire February 1, 2010, Jeff Austin III of Tyler (Mr. Austin is being reappointed).

Appointed to the Texas Alcoholic Beverage Commission for a term to expire November 15, 2011, Steven M. Weinberg of Colleyville (replacing Gail Madden of Dallas whose term expired).

Appointed to the Hidalgo County Regional Mobility Authority for a term to expire February 1, 2010, Dennis Burleson of Mission (Mr. Burleson is being reappointed).

Appointed to the Lower Rio Grande Regional Review Committee for a term to expire January 1, 2010, Yolanda Alexandre of Raymondville (replacing Simon Salinas of Sebastian whose term expired).

Appointed to the Texas Facilities Commission for a term to expire January 31, 2013, Malcolm Beckendorff of Katy (replacing Stuart Coleman of Brownwood whose term expired).

Appointed to the Texas Judicial Council for a term to expire June 30, 2009, Richard Battle of Lakeway (replacing Willie Jean Birmingham of Marshall whose term expired).

Appointed to the Texas Judicial Council for a term to expire June 30, 2011, Keely Appleton of Arlington (replacing Jose Luis Lopez of Crystal City whose term expired).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2013, Cynthia Tays of Austin (replacing Steve Minors of Austin whose term expired).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2013, Armando Elizarde of Harlingen (replacing Narciso Escareno of Brownsville whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2013, Charlotte Clifton of Snyder (replacing Greg Poole of Baytown whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2013, Robert P. Gauntt of Houston (replacing Jarvis Hollingsworth of Sugar Land whose term expired).

Appointments for March 3, 2008

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2011, Andrew Jones of Miles (replacing Winfree Leroy Brown of Christoval who is deceased).

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2013, John Nikolauk of El Dorado (Mr. Nikolauk is being reappointed).

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2013, William S. Holland of San Angelo (replacing Ralph Hoelscher of Miles whose term expired).

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2013, Martin Needham Lee of Bronte (replacing Dorris Sonnenberg of Bronte whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, Zachary S. Brady of Lubbock (replacing Suzanne Baker of Lubbock whose term expired).

Appointed to the Upper Neches River Municipal Water Authority Board of Directors for a term to expire February 1, 2013, William Barry James of Palestine (replacing Joe M. Crutcher of Palestine who resigned).

Appointed to the Coastal Bend Regional Review Committee for a term to expire January 1, 2010, Linda Henry of Tilden (replacing Tim Teal of Tilden whose term expired).

Rick Perry, Governor

TRD-200801319

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0677-GA

Requestor:

The Honorable Florence Shapiro

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Validity of collecting a Regional Transit Authority's sales and use tax at different levels in separate subregions (RQ-0677-GA)

Briefs requested by March 31, 2008

RQ-0678-GA

Requestor:

The Honorable Tony Goolsby

Chair, Committee on House Administration

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Applicability of section 143.014(c) to municipalities that have adopted the Fire and Police Employees Relations Act (FREPA) (RQ-0678-GA)

Briefs requested by March 31, 2008

RQ-0679-GA

Requestor:

The Honorable Tony Goolsby

Chair, Committee on House Administration

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the holder of a rehabilitation permit issued by the Parks & Wildlife Department is exempt from the application of section 822.102(a)(5) of the Health and Safety Code with regard to dangerous wild animals not covered by the permit (RQ-0679-GA)

Briefs requested by March 31, 2008

RQ-0680-GA

Requestor:

The Honorable David H. Aken

San Patricio County Attorney

San Patricio County Courthouse, Room 108

Sinton, Texas 78387

Re: Maximum distance that a county may require that a sexually-oriented business be located from a residence, church, elementary school, and other designated facility (RQ-0680-GA)

Briefs requested by April 3, 2008

RQ-0681-GA

Requestor:

The Honorable Bill Burnett

San Jacinto County Criminal District Attorney

#1 State Highway 150, Room 21

Coldspring, Texas 77331-0430

Re: Validity of a county policy that prohibits the rehiring of an individual for one year after termination (RQ-0681-GA)

Briefs requested by April 3, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801309
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 5, 2008

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Opinions

Opinion No. GA-0603

The Honorable Tracy O. King

Chair, Committee on Border and International Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a non-profit economic development foundation that receives partial funding from quasi-public utilities is subject to the Texas Public Information Act (RQ-0619-GA)

SUMMARY

A private entity that is supported in whole or in part by public funds or that spends public funds is in whole or in part a governmental body subject to the Public Information Act. Whether a private entity, such as a non-profit economic development foundation that receives partial funding from "quasi-public" utilities, is a governmental body requires a determination regarding the public nature of the funds and whether the public funds are spent or received by the entity in return for specific, measurable services or as general support. Such a determination involves the resolution of facts and is inappropriate for the attorney general opinion process.

Private entities that are in whole or in part governmental bodies under section 552.003, Government Code, are subject to the Public Information Act and must make public information available to the public. Whether information is public information required to be disclosed or information otherwise excepted from disclosure is a matter for an attorney general decision under the Public Information Act.

Opinion No. GA-0604

The Honorable Jesse Gonzales, Jr.

Pecos County Attorney

103 West Callaghan

Fort Stockton, Texas 79735

Re: Whether a project financed in distinct phases is subject to the competitive bidding requirements of the County Purchasing Act (RQ-0620-GA)

SUMMARY

It is a county auditor's duty under the statutory mandates of that office to decide whether to approve a claim, bill, or account. A county auditor is not, therefore, bound by the advice or opinion of the county attorney regarding the lawfulness of a claim, bill, or account against a county.

In order to conclude that a project financed in distinct phases violates the competitive bidding requirements of the County Purchasing Act ("Act"), one must consider the facts, including whether the purchase is undertaken with the intent of avoiding the requirements of the Act and whether the purchase would in normal purchasing practices be made as a single purchase. These considerations involve questions of fact that cannot be resolved in an attorney general opinion.

Opinion No. GA-0605

The Honorable David Aken

San Patricio County Attorney

San Patricio County Courthouse, Room 108

Sinton, Texas 78387

Re: The meaning of "proper magistrate" or "proper court" within article 15.20(b), Code of Criminal Procedure (RQ-0624-GA)

SUMMARY

When an individual arrested on an out-of-county warrant under Code of Criminal Procedure article 15.18 is also arrested on a parole revocation warrant, the magistrate who places the arrested person in jail must immediately notify the sheriff of the county in which the offense is alleged to have been committed of the arrest on both warrants. The sheriff receiving the notice must take charge of the arrested person and have him brought before the proper court or magistrate. The proper magistrate is an officer of the county identified by Code of Criminal Procedure article 2.09 as a magistrate, and the proper court is the court over which the magistrate presides. The sheriff may take the arrested person before a magistrate of the county where the person is held, or, to provide the magistrate's warnings more expeditiously, before a magistrate in any other county of the state. The sheriff is not required to take the arrested person to a magistrate in the county to which the person was paroled. A magistrate may perform a magistrate's duties under chapter 15 for an alleged offender even though he is not authorized to try the offense on the merits.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801320
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 5, 2008

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

SUBCHAPTER K. ADDRESS CONFIDENTIALITY PROGRAM

1 TAC §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1025, 61.1030, 61.1035, 61.1040, 61.1045, 61.1050, 61.1055, 61.1060, 61.1065, 61.1070, 61.1075, 61.1080, 61.1085, 61.1090

The Office of the Attorney General (OAG) proposes new Chapter 61, Subchapter K, §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1025, 61.1030, 61.1035, 61.1040, 61.1045, 61.1050, 61.1055, 61.1060, 61.1065, 61.1070, 61.1075, 61.1080, 61.1085, and 61.1090, relating to rules governing the administration of the Address Confidentiality Program. The new rules implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to providing victims of family violence, sexual assault, and stalking with an address confidentiality program.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.54 of the Texas Code of Criminal Procedure provides that the OAG may use the Compensation to Victims of Crime Auxiliary Fund to cover costs incurred by the OAG in administering the Address Confidentiality Program established under Subchapter C. Additionally, Article 56.93 authorizes the OAG to adopt rules to administer the program.

New §61.1001 provides definitions of terms used in the Address Confidentiality Program.

New §61.1005 establishes the duties and responsibilities of the OAG in relation to the Address Confidentiality Program.

New §61.1010 establishes eligibility requirements for an applicant to qualify for participation in the address confidentiality program.

New §61.1015 establishes the required application information and related documentation that must be provided by an applicant seeking participation in the Address Confidentiality Program.

New §61.1020 establishes the procedure for approval and certification of participation into the Address Confidentiality Program and issuance of an Address Confidentiality Program card for an approved applicant.

New §61.1025 requires that a state or local agency must accept the substitute post office address.

New §61.1030 provides reasons for OAG denial of an applicant or exclusion of a participant in the Address Confidentiality Program.

New §61.1035 establishes a reconsideration procedure for an applicant denied, or a participant cancelled from participation in the Address Confidentiality Program.

New §61.1040 establishes requirements for a state or local agency to obtain an exemption to not accept the substitute post office address.

New §61.1045 provides guidelines for an agency to request a reconsideration of disclosure or exemption.

New §61.1050 lists specific instances when the OAG shall disclose a participant's true address and provides guidelines for an entity to request disclosure of a participant's true address.

New §61.1055 establishes a reconsideration procedure for an agency denied disclosure of a participant's true residential, school or business address.

New §61.1060 establishes a procedure for a participant to withdraw from the program.

New §61.1065 provides for the disposal of mail that cannot be forwarded.

New §61.1070 requires consent when the OAG deems it necessary to disclose an applicant's or participant's true residential, business or school address in order to administer the Address Confidentiality Program.

New §61.1075 establishes a procedure for requesting a reconsideration of an applicant's disclosure determination.

New §61.1080 establishes guidelines for the destruction of information relating to an application and a participant.

New §61.1085 establishes that a participant desiring to vote is responsible for complying with all legal voting requirements.

New §61.1090 establishes that a state or local entity that accepts a participant's Address Confidentiality Program address will be responsible for administration of its rules and regulations in compliance with the governing Address Confidentiality Program statutes and administrative rules.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for each year of the first five years that the proposed rules will be in effect, there will be no additional estimated costs to the state and to local gov-

ernments expected as a result of enforcing or administering the proposed rules. Mr. Millholland has determined that for each year of the first five years that the proposed rule will be in effect, there will be no additional estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed rules. Mr. Millholland has determined that for each year of the first five years that the proposed rules will be in effect, there will be no additional estimated loss or increase in revenues to the state or to local governments as a result of enforcing or administering the proposed rules. Mr. Millholland has determined that for each year of the first five years that the proposed rules will be in effect, that enforcing or administering the rules have very few implications relating to cost or revenues of the state or local governments.

Mr. Millholland has determined that for each year of the first five years that the proposed rules will be in effect, the anticipated public benefit is clarification of policies, with the public benefit of having a more effective and efficient administration of an address confidentiality program for certain crime victims. Mr. Millholland has determined that for each year of the first five years that the proposed rules will be in effect, the probable economic cost to persons required to comply with the proposed rules is minimal.

Mr. Millholland has determined that the proposed rules will not affect a local economy, and therefore, no local impact statement has been drafted.

Mr. Millholland has determined that the proposed rules will not have an adverse economic effect on small business or micro-businesses.

Comments may be submitted no later than 30 days from the date of publication to Elaine Sample, Assistant Attorney General, Crime Victim's Compensation Program, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code, Austin, Texas 78711-2198, or by telephone (512) 936-1239 or by e-mail to Elaine.Sample@oag.state.tx.us.

The new sections are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.93, which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.82, in order to serve victims of family violence, sexual assault, or stalking by the creation of an address confidentiality program.

The proposed sections affect Texas Code of Criminal Procedure, Chapter 56.

§61.1001. Definitions.

(a) The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Applicant--A person who submits an application to the Office of the Attorney General (OAG) to participate in the Address Confidentiality Program (ACP).

(2) Application--For the purpose of administering the ACP, means the OAG application for participation in the ACP and includes all information and documents submitted by, or on the behalf of, the applicant.

(3) Certification--For the purpose of administering the ACP, means OAG authorization for an applicant to participate in the ACP.

(4) Certified mail--For the purpose of administering the ACP, means any first class letter-size or flat-size mail for which the mailer pays a surcharge to the USPS to be provided with a receipt, and the destination post office records delivery of the mail. Certified mail does not include a package regardless of size or type of mailing.

(5) Counseling--For the purpose of administering the ACP, means victim-related guidance, advice, and support with crisis intervention, obtaining information, legal advocacy, prevention of further harm, or meeting other physical, emotional or psychological needs.

(6) Family violence--As defined in Texas Family Code §71.004, means:

(A) an act by a member of family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(B) abuse, as that term is defined by Texas Family Code §261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or

(C) dating violence, as that term is defined by Texas Family Code §71.0021.

(7) First Class Mail--For the purpose of administering the ACP, means United States Postal Service (USPS) first class letter-size mail and first class flat-size mail:

(A) Letter-size mail, as defined in the USPS Domestic Mail Manual, is mail that is not less than 5 inches long or more than 11 1/2 inches long, and not less than 0.007 inches thick or more than 1/4 inch thick. Letter-size mail may not weigh more than 3.5 ounces.

(B) Flat-size mail, as defined in the USPS Domestic Mail Manual, is mail not more than 15 inches long, more than 12 inches high or more than 3/4 inches thick. Flat-size mail may not weigh more than 13 ounces.

(8) Household--A unit composed of persons living together in the same dwelling, without regard to whether they are related to each other, as defined in Texas Family Code §71.005.

(9) Law enforcement agency--A governmental agency that employs peace officers as delineated by Texas Code of Criminal Procedure Article 2.12.

(10) Mail sent by a government agency--Letter-size or flat-size mail sent by a federal, state or local government agency. Mail sent by a government agency does not include a package.

(11) Other entity--For the purpose of administering the ACP, means an entity, whether for profit or nonprofit, that provides the services of a victim's assistance counselor and provides counseling and shelter services to victims of family violence.

(12) Package--For the purpose of administering the ACP, a package shall have the same meaning as parcel, as defined in the USPS Domestic Mail Manual. Parcel is mail that does not meet the mail processing category of letter-size mail or flat-size mail.

(13) Sexual offense--For the purpose of administering the ACP, means sexual assault as defined in §22.011, aggravated sexual assault as defined in §22.021, or prohibited sexual conduct as defined in §25.02 of the Texas Penal Code.

(14) Shelter services--For the purpose of administering the ACP, means the following services provided directly, by referral, or through formal arrangements with other agencies:

(A) 24-hour-a-day shelter;

(B) a crisis call hotline available 24 hours a day;

(C) emergency medical care;

(D) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans;

(E) emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights, and legal options and providing support and accompaniment in pursuing those options;

(G) information about educational arrangements for children;

(H) information about training for and seeking employment; and

(I) a referral system to existing community services.

(15) Stalking--Has the meaning assigned by Texas Penal Code §42.072.

(16) State or local agency--For the purpose of establishing eligibility to participate in the ACP under Texas Code of Criminal Procedure Article 56.83, means a State of Texas governmental agency or a Texas county, city, town, or municipality that offers the services of a victim's assistance counselor.

(17) Texas resident--A person who has a domicile in Texas, who lives for more than a temporary period of time in Texas, or who can show intent to establish a domicile in Texas at the time of the alleged crime. Documentary evidence of the applicant's Texas residency may be established by submitting the following documentation in the name of the applicant:

(A) a lease or rental agreement;

(B) utility bills;

(C) school or work records;

(D) a driver's license;

(E) postmarked mail delivered to the applicant at the Texas residence or intended Texas residence;

(F) written verification from a victim's assistance counselor; or

(G) other documentation approved by the OAG.

(18) True Address--The physical address where the applicant actually resides, is employed, or attends school.

(19) Victim's Assistance Counselor--For the purpose of administering the ACP, means an individual authorized by a state or local agency or other for profit or nonprofit entity to meet with or assist individuals applying for participation in the ACP.

(20) Victim of family violence--An individual against whom family violence has been alleged or committed, as defined in Texas Family Code §71.004.

(b) The definitions in this section will be given their most reasonable meaning unless the content clearly indicates otherwise.

§61.1005. Address Confidentiality Program.

(a) Pursuant to Texas Code of Criminal Procedure Article 56.82, the ACP is administered by the OAG to establish an address confidentiality program to assist victims of family violence, sexual offenses, and stalking, in maintaining a confidential mailing address. The OAG shall:

(1) Designate a substitute post office box address for participants to use in place of the participant's true residential, business, or school address;

(2) Act as agent to receive service of process and mail on behalf of the participant;

(3) Forward to the participant the first class mail or mail sent by a government agency received by the OAG on behalf of the participant.

(b) The following will not be forwarded to the participant by the OAG:

(1) packages;

(2) certified mail that does not meet the definition of first class mail; and

(3) government mail that does not meet the definition of first class mail.

(c) A summons, writ, notice, demand, or process may be served on the OAG on behalf of the participant by delivery of two copies of the document to the OAG. The OAG shall retain a copy of the summons, writ, notice, demand, or process and forward the original to the participant via first class or certified mail not later than the third day after the date of service on the OAG.

(d) The OAG may not make a copy of a participant's mail received by the OAG, except that the OAG shall retain a copy of the envelope in which certified mail is received on behalf of the participant and the OAG will forward the certified mail if it meets the definitions of first class mail.

(e) The attorney general or an agent or employee of the attorney general is immune from liability for any act or omission by the agent or employee in administering the ACP if the agent or employee was acting in good faith and in the course and scope of assigned responsibilities and duties.

(f) An agent or employee of the attorney general who does not act in good faith and in the course and scope of assigned responsibilities and duties in disclosing a participant's true residential, business, or school address is subject to prosecution under Chapter 39, Texas Penal Code.

(g) The OAG is not responsible for updating or modification of the participant's public records regarding the substitute address. ACP participants remain personally responsible for compliance with all applicable federal, state, and local laws and regulations, including those which require a valid physical address of residency.

(h) The OAG is not responsible for tracking or otherwise maintaining mail or records of mail received on behalf of a participant, unless otherwise required by statute.

(i) The OAG is not responsible for notifying any person or entity of the expiration or cancellation of the participant's participation in the ACP.

(j) Upon a final determination of the expiration or cancellation of the participant's participation in the ACP, the OAG will return the participant's mail to sender.

§61.1010. Eligibility to Participate in the Address Confidentiality Program.

(a) An application for participation must be completed by the applicant in person at the state or local agency or other entity with which the application is filed.

(b) A state or local agency or other entity with which an application is filed shall forward the application to the OAG.

(c) Pursuant to Texas Code of Criminal Procedure Article 56.83, to be eligible to participate in the ACP, an applicant must:

(1) meet with a victim's assistance counselor from a state or local agency or other entity;

(2) file an application for participation with the OAG or a state or local agency or other entity;

(3) designate the OAG as agent to receive service of process and mail on behalf of the applicant; and

(4) live at a residential address, or relocate to a residential address, that is unknown to the person who committed, or is alleged to have committed, the family violence, sexual offense, or stalking.

§61.1015. Application for Participation in the Address Confidentiality Program.

(a) An application for participation in the ACP must contain the date, the applicant's name and signature affirming the following:

(1) the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of threat of immediate or future harm by the person alleged to have committed the family violence, sexual offense, or stalking;

(2) the applicant's true residential address that, to the best of the applicant's knowledge, is unknown to the alleged offender and, if applicable, the applicant's business and school address;

(3) a statement by the applicant as to whether an existing court order or a pending court case for child support or child custody or visitation that involves the applicant and, if so, the name of the legal counsel of record and each parent involved in the court order or pending case; and

(4) the name, title, and signature of the victim's assistance counselor who met with the applicant, and, if applicable, the name, title, and signature of the victim's assistance counselor who assisted the applicant in the preparation of the application.

(b) In addition to the application, the OAG may require an applicant to submit independent documentary evidence that family violence, a sexual offense, or stalking occurred. Independent documentary evidence may include, but is not limited to:

(1) an active or recently issued protective order;

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement from a physician or other health care provider regarding the applicant's medical condition as a result of the family violence, sexual offense, or stalking;

(4) a statement from a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, sexual offense, or stalking; or

(5) any other information the OAG deems appropriate to be included on the application.

§61.1020. Approval of Application and Certification; Renewal.

(a) The OAG shall review and, if appropriate, approve the applicant's application and certify the applicant's participation in the ACP.

(b) Upon certification into the ACP, the OAG will issue an ACP authorization card (ACP card) to the ACP participant. The ACP card is valid as long as the ACP participant remains certified under the ACP.

(1) An ACP card is property of the OAG and must be surrendered or destroyed upon cancellation of participation in the ACP.

(2) An ACP card is an official governmental record and is void if altered, sold, or damaged.

(3) Participants may request a new ACP card in the event the card is lost, stolen, or destroyed.

(4) The OAG may issue and replace ACP cards upon certification or request for a replacement ACP card.

(c) Certification for participation in the ACP expires on the third anniversary of the date of certification.

(d) To renew a certification, a participant must submit a new ACP application and comply with the requirements as if submitting an application for the first time. An applicant may use the same incident of family violence, sexual offense, or stalking as the basis for renewal of their application for participation. An application for renewal will be treated as an original application.

§61.1025. Acceptance of Substitute Address.

Pursuant to Texas Code Criminal Procedure Article 56.89(a), a state or local agency must accept the substitute post office box address designated by the OAG if the substitute address is presented to the agency by a participant in place of the participant's true residential, business, or school address.

§61.1030. Denial or Cancellation.

(a) Pursuant to Texas Code of Criminal Procedure Article 56.86(a), an applicant is ineligible for, and a participant may be excluded from, participation in the ACP if the applicant or participant knowingly makes a false statement on an application to the OAG.

(b) Pursuant to Texas Code of Criminal Procedure Article 56.86(b), a participant may be excluded and hence cancelled from participation in the ACP if:

(1) mail forwarded to the participant by the OAG is returned undeliverable on at least four occasions;

(2) the participant changes the participant's true residential address as provided in the application filed by the participant, and does not submit an OAG Change of Address form notifying the OAG at least 10 business days before the date of the address change; or

(3) the participant changes the participant's name.

(c) The OAG shall send a written determination and reason for denial or cancellation to the applicant or participant, as soon as practicable.

§61.1035. Request for Reconsideration of Denial or Cancellation Determination.

(a) An ACP applicant or participant has 30 days from the date of receipt of the determination of denial or cancellation to seek a reconsideration by submitting a Request for Reconsideration of Denial/Cancellation form to the OAG, along with supporting documentation. The OAG may require additional information as deemed necessary. If the applicant or participant fails to file a Reconsideration of Denial/Cancellation form within the 30-day time period, the decision of the OAG becomes final.

(b) The OAG shall make a determination on the request for reconsideration based on the information submitted. As soon as prac-

ticable, the OAG shall issue a determination on the request for reconsideration.

(c) The OAG's determination on the request for reconsideration is final.

(d) An applicant or participant who has previously been denied or cancelled from participation in the ACP may reapply in the event of a new qualifying incident.

§61.1040. Request for Agency Exemption.

(a) An agency may seek an exemption determination from the OAG under Texas Code of Criminal Procedure Article 56.89(b), to require a participant to provide the participant's true residential, business, or school address. To seek an exemption determination, the agency must file a Request for Agency Exemption form that includes, but is not limited to, the following information:

(1) the name of the agency along with an explanation and supporting documentation that shows the exemption is necessary for the agency to perform a duty or function that is imposed by law or administrative requirement;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) verification that the requestor will maintain the confidentiality of the participant's true residential, business, or school address; and

(4) verification by the agency representative affirming that the information submitted is correct.

(b) The OAG may require additional information deemed necessary by the OAG.

(c) The OAG will issue a written determination as soon as practicable.

(d) An agency may submit a request for an exemption determination at any time even if there is no current case pending at the agency.

(e) An agency previously denied an exemption may reapply in the event of new information.

§61.1045. Request for Reconsideration of Exemption Denial Determination.

(a) If an agency is denied a request under Texas Code of Criminal Procedure Article 56.89(b), an agency has 30 days from the date of receipt of the exemption denial determination to submit a written request for reconsideration to the OAG, along with supporting documentation. The OAG may require additional information as deemed necessary.

(b) The OAG shall make a determination on the request for reconsideration based on the information submitted. The OAG shall issue a determination on the request for reconsideration as soon as practicable.

(c) The OAG's determination on the request for reconsideration is final.

(d) An agency previously denied an exemption may reapply in the event of new information.

§61.1050. Exceptions.

(a) Pursuant to Texas Code of Criminal Procedure Article 56.90(a)(1)(A), the OAG shall disclose a participant's true residential, business, or school address if requested by:

(1) a law enforcement agency;

(2) the Department of Family and Protective Services for the purpose of conducting a child protective services investigation under Texas Family Code Chapter 261; or

(3) the Department of State Health Services or a local health authority for the purpose of making a notification of a communicable disease described under Texas Code of Criminal Procedure Article 21.31, Texas Family Code §54.033, or Texas Health and Safety Code §81.051.

(b) Pursuant to Texas Code of Criminal Procedure Article 56.90(a)(1)(B), the OAG shall disclose a participant's true residential, business, or school address if required by a court order.

(c) A request for disclosure of a participant's true residential, business, or school address from an entity pursuant to this section, must be submitted on an Agency Request for Disclosure form. The request shall contain the following information:

(1) the name of the agency requesting the disclosure and the reason for the request;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) signed verification that the requestor will maintain the confidentiality of the participant's true residential, business or school address;

(4) a signed statement by the agency representative affirming that the information submitted is correct; and

(5) an original certified copy of the court order, if applicable.

(d) The OAG may require additional information as deemed necessary by the OAG.

(e) The OAG will issue a written determination as soon as practicable. If the OAG determination is to disclose the information, the information will be provided to the agency at the same time as the determination. If the OAG's determination is to not disclose the information, the agency may file a request for reconsideration.

§61.1055. Request for Reconsideration of Denial of Exception.

(a) If an agency is denied under Texas Code of Criminal Procedure Article 56.90, an agency has 30 business days from the date of receipt of the disclosure determination to submit a written request for reconsideration to the OAG, along with supporting documentation. The OAG may require additional information as deemed necessary.

(b) The OAG shall make a determination on the request for reconsideration based on the information submitted. As soon as practicable, the OAG shall issue a determination on the request for reconsideration.

(c) The OAG's determination on the request for reconsideration is final.

(d) An agency previously denied disclosure may reapply in the event of new information.

§61.1060. Withdrawal From Participation.

A participant may withdraw from participation in the ACP by submitting to the OAG a Withdrawal From Participation form signed by the participant.

§61.1065. Mail That Cannot Be Forwarded.

If a participant receives mail that cannot be forwarded, the ACP may dispose of such mail in accordance with United States Postal Service laws, regulations and guidelines, including, but not limited to, returning mail to the sender or refusing to accept delivery of such mail.

§61.1070. Participant's Consent to Disclose.

(a) The applicant is required to consent to the OAG's disclosure of the participant's true residential, business or school address if the OAG deems it necessary to administer the ACP.

(b) If the OAG deems it necessary to disclose the participant's true residential, business or school address, the OAG will send the participant a notification of disclosure.

§61.1075. Request for Reconsideration of OAG Disclosure Determination.

Within the time period stated in the notification of disclosure, counted from the date of receipt of the notification, the applicant must submit a written request for reconsideration of the OAG's disclosure determination, along with supporting documentation. The OAG may require additional information as deemed necessary.

§61.1080. Destruction of Information.

(a) The OAG shall destroy all information relating to a participant on the third anniversary of the date participation in the ACP ends.

(b) The OAG shall destroy all information relating to a denied application on the third anniversary of the date of the denial.

§61.1085. Voter Registration.

A participant who desires to register to vote is responsible for compliance with the requirements of the registrar of the county in which the participant resides and all other applicable federal, state, and local laws and regulations.

§61.1090. State or Local Agency Responsibility.

A state or local agency that accepts an ACP participant's substitute post office box address is responsible for the administration of its rules and regulations in compliance with Texas Code of Criminal Procedure Chapter 56, Subchapter C.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801238
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: April 13, 2008
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 8. AGRICULTURAL HAZARD COMMUNICATION REGULATIONS

4 TAC §8.2, §8.11

The Texas Department of Agriculture (the department) proposes amendments to §8.2, concerning definitions, and §8.11, concerning training programs provided by the department for agricultural laborers. The amendment to §8.2 is proposed to amend the definition of "Service" to reflect the name change from the Texas Cooperative Extension Service to the Texas AgriLife Extension Service. The amendment to §8.11, relating to counties in which the department has the responsibility to provide training programs, is proposed to specify the counties in which the department has primary responsibility for administering and providing for training programs for agricultural laborers.

The proposed amendment to §8.11 is made to comply with §125.009 of the Texas Agriculture Code, which requires that the department in conjunction with the Texas AgriLife Extension Service shall develop an on-going training program for agricultural laborers. The department is required to provide training in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The department may also provide training in additional counties that it has determined that a significant farm labor work force exists. Specific proposed changes made to §8.11(b)(1) identifies counties that have a farm labor work force of 2,000 or more according to the 2002 United States Census of Agriculture. Specific proposed changes to §8.11(b)(2) identifies those counties that the department has determined have a significant farm labor work force and the department will continue to provide on-going training programs in those counties.

Jimmy Bush, assistant commissioner for pesticides, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as amended.

Mr. Bush also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the sections will be increased efficiency and effectiveness in the training programs provided in counties that have a significant farm labor work force. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments to §8.2 and §8.11 are proposed under the Texas Agriculture Code §125.014, which provides the Texas Department of Agriculture with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 125 of the Texas Agriculture Code.

The Texas Agriculture Code, Chapter 125, is affected by the proposal.

§8.2. Definitions.

In addition to the statutory definitions, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (20) (No change.)

(21) Service--The Texas AgriLife [~~Agricultural~~] Extension Service.

(22) - (30) (No change.)

§8.11. Training Program.

(a) (No change.)

(b) Training provided by the department.

(1) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The counties are as follows: Cherokee [~~Bexar,~~ ~~Cameron,~~ ~~Dawson,~~ ~~Fort~~ ~~Bend~~], Gaines, Harris [~~Gonzales,~~ ~~Hale~~], Hidalgo, Parker [~~Lamb,~~ ~~Lubbock~~], Smith, [~~Starr,~~] and Wharton [~~Terry~~].

(2) The department shall provide training in the following additional counties which it has determined as having a significant farm labor work force: Bexar, Cameron, Castro, Dawson, Deaf Smith, Erath, Floyd, Fort Bend, Frio, Gonzales, Hale, Hockley, Lamb, Lubbock, McLennan, Matagorda, Milam, Pecos, Starr, Terry, Uvalde, Van Zandt, Waller, Willacy, and Zavala.

(3) (No change.)

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801252
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-4075

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CHAPTER 23. ROSE GRADING

4 TAC §23.4

The Texas Department of Agriculture (the department) proposes an amendment to §23.4, concerning Rose Grading. The amendment is proposed to correct an error in the rose grading caliper specification chart found in §23.4(c)(5). The proposal changes the No.1 1/2 Grade for Polyantha, Shrub Landscape, and Low Growing Floribunda Roses caliper from 1/16 to 2/16, which is the correct caliber and the caliber actually required by the department for the No. 1 1/2 grade.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the amended section.

Mr. Kostroun also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the new sections will be to have the correct caliber requirement for Polyantha, Shrub Landscape, and Low Growing Floribunda Roses in §23.4(c)(5). There is no anticipated cost to persons, microbusinesses or small businesses required to comply with the proposed amendment because the amendment merely serves to correct the caliper requirement to make it consistent with current requirements and agency practice.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs,Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment to §23.4 is proposed under the Texas Agriculture Code, §121.007. which provides the department with the authority to adopt rules necessary for the inspection, grading, and labeling of all rose plants sold or offered for sale in Texas.

The code affected by the proposal is the Texas Agriculture Code, Chapter 121.

§23.4 Labeling.

(a) - (b) (No change.)

(c) Grade sizes.

(1) - (4) (No change.)

(5) All canes used in grading must branch within three inches of the bud union. The caliper of the cane will be measured at four inches from the bud union.
Figure: 4 TAC §23.4(c)(5)

(6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 55. SWINE

4 TAC §55.3

The Texas Animal Health Commission ("TAHC" or "Commission") proposes amendments to Chapter 55, §55.3 concerning the Feeding of Garbage to Swine. Section 55.3 contains requirements for registration of people who feed unrestricted garbage to swine. This proposal will add an explicit requirement that, the swine will need to be tested by the Commission for pseudorabies and Brucellosis. Because these permitted operations can be a high risk for diseases the Commission believes that the swine should be tested for pseudorabies and Brucellosis as part of the regulatory process in order to protect against the risk of exposure. Brucellosis and pseudorabies and other diseases are of concern to the Commission because of the high risk that may be transmitted among swine or to other species of livestock. This added requirement by the Commission allows the agency to require a test or tests of swine on the registered location at any time the commission determines that the risk is sufficient, based on a risk assessment, to warrant a test. The amendment is being added in §55.3(c) under permit requirements. Language was also added to state that as determined by disease risk assessment to require the testing of swine for diseases determined to pose a risk to other swine. The test will be performed by agency personnel.

FISCAL NOTE

Ms. Angela Lucas, Deputy Director of Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. Implementation of this rule poses no significant fiscal impact on small or micro-businesses. In response to the requirements for an Economic Impact Statement and Regulatory Analysis this rule will not have an adverse impact on small businesses. The rule will provide that these permittees be tested but because the agency is performing the test and there is not a cost to the permittee and after testing if negative, they will know they have swine which do not have either disease.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the these high risk herds will be tested for status on these two diseases and it will provide a method of consistent disease surveillance in protecting the swine industry.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, Section 2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §165.026 of the Texas Agriculture Code provides the Commission with specific statutory authority to regulate and register people who feed unrestricted garbage to swine. Specifically, in subsection (c) it provides that "(t)he commission may adopt rules for registration under this section, including rules providing for registration issuance, revocation, and renewal, disease tests, inspections, bookkeeping, and appropriate handling and treatment of unrestricted garbage."

No other statutes, articles, or codes are affected by the amendment.

§55.3. Feeding of Garbage.

(a) In addition to the definitions set out in the Texas Agriculture Code, Chapter 165 and Chapter 55 of this title (relating to Swine) and Chapter 35 Subchapter B, of this title (relating to Brucellosis), the following words and terms, when used in this section [~~subsection~~], shall have the following meanings, unless the context clearly indicates otherwise:

(1) Restricted garbage--includes the animal refuse matter and the putrescible animal waste resulting from handling, preparing, cooking, or consuming food containing all or part of an animal carcass, the animal waste material by-products or commingled animal and vegetable waste material by-products of a restaurant, kitchen, cookery, or slaughterhouse, and refuse accumulations of animal matter, commingled animal and vegetable matter, liquid or otherwise.

(2) Unrestricted garbage--includes the vegetable, fruit, dairy, or baked goods refuse matter and vegetable waste and refuse accumulations resulting from handling, preparing, cooking, or consuming food containing only vegetable matter, liquid or otherwise.

(3) Person--includes any individual, partnership, association, corporation, company, joint stock association, governmental subdivision, public or private organization of any character, body politic or any organized group of persons, whether incorporated or not; including any trustee, receiver, assignee, or similar representative thereof.

(b) A person is prohibited from feeding restricted garbage to swine or providing restricted garbage to any person for the purpose of feeding swine.

(c) A person may feed unrestricted garbage to swine only if the person first registers with and secures a permit from the commission.

(1) Each location where unrestricted garbage is fed to swine shall be registered with the Commission.

(2) Registered locations shall be issued a permit upon compliance with the requirements contained in this section.

(3) Feral swine shall not be fed on the premises of a registered location.

(4) Prior to registration/re-registration approval, a brucellosis and pseudorabies negative test may be required on all breeding swine based on the outcome of a disease risk analysis of the herd. Tests for other diseases may be conducted on the samples collected for registration approval or renewal.

(5) An annual disease risk analysis shall be conducted by a state or federal inspector on each registered location.

(6) As determined by an analysis of risk for brucellosis and pseudorabies and other diseases of concern that may be transmitted among swine or to other species of livestock, the commission may require a test or tests of swine on the registered location at any time the commission determines that the risk is sufficient to warrant a test.

(d) Garbage feeding permit.

(1) Permits are valid for a two year period from the date of issuance.

(2) Application. Application for a permit shall be submitted on a form prescribed by the Commission providing at least the following information:

(A) Name, address and telephone number of applicant

(B) Physical location of the garbage feeding facility

(C) Type of garbage to be fed and source(s) of garbage received

(3) Renewal.

(A) A disease risk analysis shall be conducted on each registered location 30 - 60 days prior to expiration of the permit and it will be necessary to reapply.

(B) If a properly completed application for the renewal of a permit is not made between 30 - 60 days prior to its expiration, the permit will terminate at the end of its stated term.

(C) An extension of the permit expiration date may be provided pending completion of the disease risk analysis and any required testing resulting from the analysis.

(e) Inspection authority.

(1) For the purpose of inspection, examination, or sampling, Commission representatives are entitled to enter at reasonable hours any building or place owned, controlled, or operated by a permitted person if from probable cause it appears that the building or place is in the business of feeding garbage to swine.

(2) A commission representative shall perform inspections of applicants for registration at a time when normal feeding activities can be observed.

(f) Facilities.

(1) Garbage shall not be fed on the ground.

(2) If feeding platforms are used, there must be watertight platform space of at least three square feet for each hog to be fed.

(3) If troughs are used, at least one linear foot must be supplied for each hog to be fed.

(g) Records: The permit holder shall maintain a daily log reflecting the amount of garbage collected and the sources of such garbage. A copy of the log shall be provided to a commission representative upon request.

(h) Sanitation

(1) Water.

(A) There shall be a sufficient supply of water for cleaning.

(B) There shall be a sufficient supply of clean water available for swine to drink at all times.

(C) Shelters and feeding areas shall be constructed to provide for satisfactory drainage.

(2) Rodent and Pest Control.

(A) Effective fly and rodent control measures shall be used.

(B) Containers used to transport or store garbage shall be closed and sufficiently sealed to prevent access by rodents or insects. These containers shall be kept clean and free from accumulations of grease or foreign matter.

(3) Excess garbage shall be removed from the premises, and is not to remain on the premises over 36 hours. Unused, excess, or spoiled garbage shall be buried or burned and shall under no circumstances be poured or dumped in the feeding or cooking area.

(4) Dead animals shall be removed from the registered location premises promptly and disposed of in accordance with local ordinances.

(i) Violations and Penalties. In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to falsify an application.

(2) Any violation of these rules is subject to the appropriate administrative, civil or criminal penalties. In addition, the agency may revoke or deny renewal of a permit, and/or assess administrative penalties against any person for a violation of these rules.

(j) The prohibition contained in subsection (b) of this section is nonapplicable for a facility operated by the Texas Department of Criminal Justice if the garbage is properly treated in accordance with applicable federal requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2008.

TRD-200801175
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 719-0700

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TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.22, 153.51, 153.84

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly propose amendments to interpretations 7 TAC §§153.22, 153.51, and 153.84, relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3).

Texas Constitution, Article XVI, §50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Pursuant to Section 50(u), as implemented by Texas Finance Code, §11.308 and §15.413, the power to interpret Section 50(a)(5) - (7), (e) - (p), and (t) of the Texas Constitution has been separately and independently delegated to the commissions, subject to the statutory admonition that the commissions strive for consistency in the exercise of this independent authority. The commissions have jointly adopted the home equity lending interpretations codified in 7 TAC Chapter 153.

Section 50 was amended effective December 4, 2007, pursuant to voter approval of Proposition 8 (House Joint Resolution Number 72), proposed in the 80th Texas Legislative Session. In general, the purpose of the proposed amendments to §§153.22, 153.51, and 153.84 is to conform with the constitutional changes in Section 50. The individual purposes of the amendments to each section are provided in the following paragraphs.

The proposed amendments to §153.22 outline the lender's obligation to provide copies of certain documents at closing, as required by amended Section 50(a)(6)(Q)(v), including a copy of the final loan application and all documents that are signed by the owner at closing.

The proposed amendments to §153.51 clarify the lender's obligation to provide certain disclosures at least one business day prior to closing, as required by amended Section 50(g). The proposed changes to §153.51 also serve to harmonize the 12-day

consumer disclosure requirement with the constitutional amendment requiring that home equity loans not be closed before one business day after the lender has provided the owner with a copy of the most current version of the loan application, if not previously provided.

The proposed amendments to §153.84 implement the prohibition on the owner's use of preprinted checks unsolicited by the borrower to obtain a HELOC advance, as required by amended Section 50(t)(3). New paragraph (2) clarifies that the borrower may not request that the lender periodically send preprinted checks to the borrower. Current paragraphs (3) and (4) of §153.84 are proposed for deletion, as these definitions are unnecessary due to the constitutional changes.

Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas, and Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission, have determined that, for the first five-year period the amended interpretations are in effect, there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Pettijohn and Commissioner Feeney also have determined that, for each year of the first five years the amended interpretations as proposed are in effect, the anticipated public benefit will be implementation of and consistency with the Texas Constitution. Stability of the credit markets is enhanced through the creation of reliable standards and guidelines for home equity loans. Further, this stability will benefit consumers by ensuring that home equity loans are as widely available to Texas homeowners as possible. Finally, availability, certainty, and the resulting enhancement of competition will contribute to reducing the overall transaction cost to lenders and consumers with respect to home equity loans.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses. Any requirements are imposed by the Texas Constitution and are not a result of the proposed amendments to the interpretations. The proposed amendments, therefore, do not impose any additional costs to persons who are required to comply with the interpretations.

Written comments on the proposed amendments may be submitted to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or to Betsy Loar, General Counsel, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to sealy.hutchings@occc.state.tx.us or to betsy.loar@tcud.state.tx.us. To be considered, a written comment must be received on or before the 30th day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 30th day after the proposed amendments are published in the *Texas Register*, no further comments will be considered or accepted by the commissions.

The amended interpretations are proposed pursuant to Texas Finance Code, §11.308 and §15.413, which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §§50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3) are affected by the proposed amendments.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

At closing, the lender must provide the owner with a copy of the final loan application and all documents that are signed by the owner at closing in connection with the equity loan. With the exception of the final loan application, the [~~The~~] lender is not required to give the owner copies of documents that were signed by the owner prior to closing, such as those signed during the application process. Because of their nature some documents, for example, a notification of the election of an owner or an owner's spouse not to rescind under the right of rescission, must be signed after the date of closing. The lender must provide the owner copies of documents signed after the date of closing within three business days.

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument. In addition, an equity loan may not be closed before one business day after the lender provides the owner with a copy of the most current version of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(1) - (3) (No change.)

§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, [~~preprinted solicitation check,~~] or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited [~~similar devices~~] include prearranged drafts, preprinted [~~convenience~~] checks requested by the borrower , or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) - (C) (No change.)

(2) A borrower may from time to time specifically request preprinted checks for use in obtaining a HELOC advance but may not request the lender to periodically send preprinted checks to the borrower.

(3) [~~(2)~~] An owner may, but is not required to, make in-person contact with the lender to request preprinted checks or to obtain a HELOC advance.

[~~(3) A credit card, which is a prohibited device under Section 50(t)(3), is a card that may be used for personal, family, or household use to debit an open-end account.~~]

[~~(4) A preprinted solicitation check, which is a prohibited device under Section 50(t)(3), is a check that:~~]

[~~(A) is provided to an owner for the purpose of originating a HELOC or to a borrower for the purpose of soliciting additional advances on an existing HELOC;~~]

[~~(B) contains at least one preprinted key payment term, such as the amount or payee; and~~]

[~~(C) is not requested by the borrower or owner.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801149
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 936-7610

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1

The Office of Rural Community Affairs (Office) proposes amendments to §255.1 for the Community Development Block Grant (CDBG) non-entitlement area funds.

The amendments are being proposed to specify criteria contained within the 2008 Action Plan.

Charles S. (Charlie) Stone, Executive Director of the Office, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments as proposed.

Mr. Stone has also determined that for each year of the first five-year period the amendments are in effect the public benefit as a result of enforcing the amended section will be the equitable allocation of CDBG non-entitlement funds to eligible units of general local government in Texas. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Mark Wyatt, Director of Community Development, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under §487.052 of the Texas Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§255.1. General Provisions.

(a) (No change.)

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) community development fund [~~and community development supplemental fund~~];

(2) - (13) (No change.)

(14) non-border colonia fund;[~~,~~]

(15) renewable energy demonstration pilot program.

(c) - (d) (No change.)

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the TxCDBG.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TxCDBG application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses (including smoke testing televising/video taping line work, or any other investigative method to determine the overall scope and location of the project work activities) ; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG contract; prisons/detention centers; government supported facilities; and racetracks.

(2) (No change.)

(f) - (g) (No change.)

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) - (5) (No change.)

(6) Submit any past due audit to the Office.

(A) (No change.)

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs [~~Legislative Budget Board~~] for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Executive Committee for review and consideration.

(7) - (8) (No change.)

(i) - (m) (No change.)

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TxCDBG funds awarded under an open TxCDBG contract within 12 months from the start date of the contract or prior to the application deadlines and have received all applicable environmental approvals from TxCDBG covering this obligation. This threshold is applicable to TxCDBG contracts with an original 24-month contract period. To meet this threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(2) - (3) (No change.)

(4) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 36 [~~26~~] months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(o) - (q) (No change.)

(r) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) (No change.)

(s) - (y) (No change.)

(z) If an audit becomes due after the award date, the Office may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Office within four months of the audit due date, the Office may withdraw the award and re-allocate the funds in accordance with subsection (s) of this section (excludes the colonia self-help center awards and Texas Capital Fund awards).

(aa) If the Regional Review Committee for a particular region fails to approve, to the satisfaction of the Office, an objective scoring methodology for the 2009 Community Development Fund competition, the Office will award 2008 Program Year funds in that region for the Community Development Fund and Community Development Supplemental Fund based the state's existing scores under section IV (C)(1)(a-e) of the approved 2007 Texas CDBG Action Plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801239
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 936-7887

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.10

The Texas Optometry Board proposes amendments to §273.10, concerning limitations on license renewal when the agency is notified that a licensee is in arrears on court ordered child support. The amendments impose the procedure authorized by Senate Bill 288, 80th Legislature, and permit the agency to charge a fee to recover administrative costs.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, during this same period, any additional administrative costs should be offset by the fee that the amendments allow the agency to impose.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that child support obligations are satisfied.

Economic Impact Statement and Regulatory Flexibility Analysis

The Board licenses approximately 3,600 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices

which meet the definition of a small business. Some of these practices meet the definition of a micro business. The Board does not license these practices.

The economic costs for persons who are required to comply with the amendments will be a charge for the administrative costs expended by the agency to comply with the requirements of Texas Family Code §232.0135. Only those licensees who are in arrears of child support obligations would be subject to the fee, which is estimated to be no more than $200 for each notice the agency receives. The fee is not imposed on small or micro-businesses, but on professional licensees. The Board will be collecting administrative costs from the actual licensees requiring the additional procedures rather than passing such costs to all licensees of the Board.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Senate Bill 288, 80th Legislature, Texas Family Code §232.0135. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Texas Family Code §232.0135 requires the agency to refuse to renew a license when requested to do so by a child support agency and allows the agency to recoup costs.

§273.10. Licensee Compliance with Payment Obligations *[~~Guaranteed Student Loan Corporation~~]*.

(a) Texas Guaranteed Student Loan Corporation

(1) If, after a hearing or an opportunity for hearing, the board determines that a licensee is in default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:

(A) [~~(1)~~] the licensee has entered into a repayment agreement on the defaulted loan; or

(B) [~~(2)~~] the licensee is not in default on a loan guaranteed by the corporation.

(2) [~~(b)~~] If, after a hearing or an opportunity for hearing, the board determines that a licensee has defaulted on a repayment agreement with the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:

(A) [~~(1)~~] the licensee has entered into another repayment agreement on the defaulted loan; or

(B) [~~(2)~~] the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(b) Child support payments; Chapter 232 of the Texas Family Code

(1) An application for license renewal will not be accepted if a child support agency provides the Board with notice that a licensee has failed to pay child support for six months or more and requests that the board not accept the application.

(2) The application will be considered once the board receives notice from the child support agency that the licensee is in compliance with the requirements of Chapter 232 of the Texas Family Code.

(3) The board may charge the licensee a fee in an amount sufficient to recover the administrative costs incurred by the board under this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2008.

TRD-200801177
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 305-8502

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CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.1

The Texas Optometry Board proposes amendments to §275.1, concerning required continuing education in professional responsibility. The amendments require licensees to obtain one of the 16 hours of continuing education in a course covering professional responsibility administered by an instate optometry school or college.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that licensees must exhibit continued competency in state law, prescribing of medications and other subjects related to professional responsibility.

Economic Impact Statement and Regulatory Flexibility Analysis

The Board licenses approximately 3,600 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The Board does not license these practices.

It is anticipated that there will be no economic costs for persons who are required to comply with the amendments. The amendments do not require licensees to obtain hours in addition to that currently required by statute and rule. To minimize the possibility of any additional costs, the amendments require that course providers present the course on the Internet and in live meetings allowing licensees to obtain the specific hour in the same manner as presently required hours. No disparate effect is foreseen on small or micro-businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe

Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.308. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.308 sets the requirements for the continuing education each licensee must take annually.

§275.1. General Requirements.

(a) The Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2010 license renewal, the subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or schools of optometry and such other programs or courses of other organizations as are approved by the board upon recommendation from the Continuing Education Committee, appointed by the Board Chair. The Continuing Education Committee will consider, among other things in its discretion, the following criteria in approving courses and classifying the hours as general, diagnosis or treatment of ocular disease, and professional responsibility:

(1) (No change.)

(2) courses sponsored by or given by accredited optometry schools will be granted automatic approval as limited by paragraph (9) of this subsection;

(3) courses meeting evaluation standards and receiving approval of the Association of Regulatory Boards of Optometry will be granted automatic approval as limited by paragraph (9) of this subsection;

(4) - (8) (No change.)

(9) courses in professional responsibility given by a board accredited instate college or school of optometry may be given approval if the course:

(A) is made available as a live course in this state and on the internet, and

(B) includes the study of professional ethics, the Texas Optometry Act and Board Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2008.

TRD-200801178

Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 305-8502

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.143

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.143 concerning Sponsor's Record.

The amendment to §523.143 will require CPE sponsors to keep a copy of the complete course material as required by §523.140 rather than just an outline for the course.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs to the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs to the state.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more thorough record for CPE sponsors.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not impose additional costs on those required to comply.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional costs on small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on April 2, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy,

333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.143. Sponsor's Record.

(a) In order to support the reports required of participants, the sponsor of group or self-study programs must retain for an appropriate period:

(1) record of participation;

(2) course materials as required by §523.140 of this title (relating to Program Standards); [~~outline of the course (or equivalent);~~]

(3) date(s);

(4) location;

(5) instructor(s);

(6) number of credit hours; and

(7) evaluation of program as directed in §523.141(b) of this title (relating to Evaluation).

(b) To satisfy the detailed requirements of all jurisdictions, a retention period of three years from the date the program is completed is appropriate. The record of attendance should reflect the credit hours earned by each participant, including those who arrive late or leave early.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2008.

TRD-200801181
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 56. FAMILY PLANNING

25 TAC §§56.1 - 56.19

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§56.1 - 56.3 and §§56.17 - 56.19, the repeal of §§56.4 - 56.16, and new §§56.4 - 56.16 concerning the provision of family planning services in this state.

BACKGROUND AND PURPOSE

The amendments, repeals, and new sections are necessary to assist the department in the implementation of the federal Title X funding regulations.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 56.1 - 56.19 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, the department also has determined that §§56.4 - 56.16 should be repealed and replaced with new rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§56.1 - 56.3 incorporate the current department and program names to be consistent with current terminology used by the department.

Amendments to §56.1 provide flexibility in the current department and program policy manual to be used.

Amendments to §56.2 incorporate the current department and program names to be consistent with current terminology used by the department.

The amendment to §56.3 provides increased clarity concerning the purpose of the family planning programs.

Existing §56.4 is repealed because the Family Planning Advisory Committee was abolished by the Executive Commissioner of the Health and Human Services Commission in 2003 as authorized by the 78th Legislature. New §56.4 clarifies that while payment rates for services under Titles V, X, and XX are set by the department, the commission sets fees, charges and rates for family planning services provided under Title XIX (Medicaid).

The proposed new §56.5 allows providers flexibility among available contraceptive methods they are required to keep in stock. This provision also ensures compliance with Title X regulations.

The proposed new §56.6 clarifies that abortion is not considered a method of family planning, and that no state-appropriated funds may be used to pay the direct or indirect cost of abortion procedures.

The proposed new §56.7 clarifies the role of the Health and Human Services Commission in administering the Title XIX Medicaid family planning services program.

The proposed new §56.8 specifies records retention periods and requires that records be accessible by the commission and the department.

The proposed new §56.9 clarifies that Medicaid clients shall be offered family planning services within 30 days of their request for those services.

The proposed new §56.10 clarifies that clients have the right to choose their preferred method and source of family planning service, and may not be subjected to coercion to accept services.

The proposed new §56.11 states that providers must safeguard the confidentiality of clients' family planning information, and that clients must provide written authorization prior to release of personally identifying information except for reports relating to child abuse required by Texas Family Code, Chapter 261.

The proposed new §56.12 and amendments to §56.17, §56.18, and §56.19 update the current department and program names to be consistent with current terminology used by the department.

The proposed new §56.13 renumbers the section in the chapter and is more concise than the §56.14 being repealed.

The proposed new §56.14 corrects a typo in §56.15 being repealed. The new rule provides increased clarity concerning the type of adult participation encouraged in adolescent family planning.

The proposed new §56.15 clarifies that contractors shall make family planning and genetic services available in compliance with civil rights laws.

The proposed new §56.16 provides increased clarity to Title X contractors concerning federal regulations concerning Informational and Educational Committee(s).

FISCAL NOTE

David Hagerla, Manager, Preventive and Primary Care Unit, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed. These amendments, repeals, and new sections are intended to clarify, update, and streamline the rules, and are not anticipated to be controversial or have significant fiscal impact to the department or local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Hagerla has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses that are providers of family planning and family planning genetic services will be required to alter their business practices in order to comply with the sections. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Hagerla has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be continued access to family planning and family planning genetic services for eligible, low-income Texas women.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Kim Roberts, Mail Code 1923, Community Health Services Section, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or by email to kim.roberts@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments and new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments and new rules affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§56.1. Applicability of Family Planning Requirements.

The requirements in each section apply to Titles V, X, XIX (Medicaid), and XX family planning programs unless otherwise specified within the section. Family planning contractors are also required to observe all guidelines and operating procedures outlined in the most recent Family Planning Policy Manual, [~~Program Policies Manual, February, 2003, and/or Title V Policies and Procedures Manual, September, 2002,~~] as required by their contracts. In addition to the requirements set out in Chapter 56, Title XIX (Medicaid) providers must comply with the terms and conditions of the Provider Agreement signed by all providers as a condition of participation in the Texas Medical Assistance Program.

§56.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings.

[~~(1) Board--The Texas Board of Health.~~]

(1) [~~(2)~~] Client--Any individuals [~~individual~~] seeking assistance from a Department of State Health Services [~~Texas Department of Health~~] contractor or provider to meet their family planning goals.

(2) [~~(3)~~] Commission--The Texas Health and Human Services Commission [~~Committee--The Family Planning Advisory Committee~~].

(3) [~~(4)~~] Contraception--Any United States Food and Drug Administration (FDA)-approved [~~The~~] means of pregnancy prevention. Methods include permanent methods and temporary methods.

(4) [~~(5)~~] Contractor--Any entity that contracts with the Department of State Health Services [~~Texas Department of Health~~] to provide Title V, X, and/or XX family planning services.

(5) [~~(6)~~] Department--The Department of State Health Services [~~Texas Department of Health~~].

[~~(7) DHS--The Texas Department of Human Services.~~]

[~~(8) Family planning--The process of establishing the preferred number and spacing of one's children, selecting the means to achieve the goals, and effectively using that means.~~]

(6) [~~(9)~~] Family planning services may include: [~~--A public health care system targeting low-income women, men, and adolescents that is designed to enable people voluntarily to limit their family size or to space their children.~~]

(A) health history and physical;

(B) counseling and education;

(C) laboratory testing;

(D) provision of a contraceptive method; and

(E) referrals for additional services as needed.

(7) [~~(10)~~] Intended pregnancy--Pregnancy a woman reports as [~~timed well or~~] desired at the time of conception.

(8) [~~(11)~~] Medicaid--Title XIX of the Social Security Act.

(9) [~~(12)~~] Provider--Any entity that receives Titles V, X, XIX, or XX [~~Texas Department of Health~~] funding to provide family planning services.

(10) [~~(13)~~] Region--Any of the public health service regions established by the Department of State Health Services [~~Texas Department of Health~~].

(11) [~~(14)~~] Title V family planning program--Family [~~Grants for the provision of family~~] planning services funded by grants under the Maternal and Child Health Act, 42 United States Code §701 *et seq*.

(12) [~~(15)~~] Title X family planning program--Family [~~Grants for the provision of family~~] planning services funded by grants under the Public Health Service Act, 42 United States Code §300 *et seq*.

(13) [~~(16)~~] Title XIX family planning program--Family planning services provided under Title XIX (Medicaid) of the Social Security Act, 42 United States Code §1396 *et seq*.

(14) [~~(17)~~] Title XX family planning program--Family [~~Grants for the provision of family~~] planning services funded by grants [~~provided~~] under the Social Services Block Grant, 42 United States Code §1397 *et seq*.

§56.3. Purposes.

The purposes of family planning services are:

(1) to enable women and men to determine the preferred number and spacing of their children;

(2) [~~(1)~~] to affect positively the outcome of future pregnancies;

(3) [~~(2)~~] to increase the proportion of intended pregnancies; and

(4) [~~(3)~~] to improve the health status of Texas communities.

§56.4. Maximum Rates and Specific Codes.

For payment of purchased counseling, educational, medical, and sterilization family planning services funded by grants under Titles V, X, and XX, maximum rates are established by the department according to specific diagnosis and procedure codes. The Texas Health and Human Services Commission sets fees, charges, and rates for family planning services provided under Title XIX (Medicaid).

§56.5. Range of Methods.

A broad range of FDA-approved methods of contraception must be made available to the client, either directly or by referral to another provider of contraceptive services. All brands of the different contraceptive methods need not be made available, but each major contraceptive category must be made available.

§56.6. Abortion Statement.

Abortion is not considered a method of family planning and no state funds appropriated to the department shall be used to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of abortion procedures provided by contractors.

§56.7. Requirements for Reimbursement of Family Planning Services.

The commission and the department shall reimburse providers for services provided in compliance with program standards, policies and procedures, and contract requirements unless payment is prohibited by law.

§56.8. Records Retention.

Providers shall maintain for the time period specified by the department all records pertaining to client services, contracts, and payments. Title XIX (Medicaid) record retention requirements are found in 1 Texas Administrative Code, §354.1004 (relating to Retention of Records). All records relating to services must be accessible for examination at any reasonable time to representatives of the commission and/or the department and as required by law.

§56.9. Prompt Service.

Medicaid clients requesting family planning assistance shall be offered services within 30 days of request.

§56.10. Freedom of Choice.

Clients have the right to choose freely family planning methods and sources of services. Clients shall not be subjected to coercion to accept services.

§56.11. Confidentiality.

Providers shall safeguard client family planning information. Clients must provide written authorization prior to the release of any personally identifying information except reports of child abuse required by Texas Family Code, Chapter 261, and as required or authorized by other law. The department may distribute appropriated funds only to contractors that show good faith efforts to comply with all child abuse reporting guidelines and requirements as interpreted by department policy.

(1) Providers shall ensure client confidentiality and provide safeguards for clients against the invasion of personal privacy.

(2) All personnel (both paid and volunteer) must be informed during orientation of the importance of keeping information about a client confidential.

(3) Clients' records must be monitored to ensure access is limited to appropriate staff and to department and/or commission staff or their authorized representatives.

(4) The client's preference of methods of follow-up contact shall be documented in the client's record.

(5) Each client shall receive verbal assurance of confidentiality and an explanation of what confidentiality means.

§56.12. Eligibility for Family Planning Services.

Eligibility shall be determined according to the requirements of the most recent Family Planning Policy Manual. Title XIX (Medicaid) eligibility is determined by the guidelines set by the commission. Individuals who receive Medicaid are eligible for family planning medical, counseling, and educational services. Contractors shall not deny family planning services to eligible clients because of their inability to pay for services.

§56.13. Consent.

Providers may provide family planning services, including prescription drugs, without the consent of the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations. A provider may not require consent for family planning services from the spouse of a married client.

§56.14. Family Planning for Adolescents.

(a) Adolescents age 17 and younger shall be provided individualized family planning counseling and family planning medical services that meet their specific needs within two weeks of request.

(b) The provider shall ensure that:

(1) counseling for adolescents includes encouraging participation of families, parents, and/or legal guardians in their decision to seek family planning services;

(2) counseling for adolescents includes information on use of all medically approved birth control methods including abstinence;

(3) appointment schedules are flexible enough to accommodate access for adolescents requesting services;

(4) full participation in family planning medical services is encouraged but may be deferred for the adolescent electing a nonprescriptive contraceptive method; and

(5) the adolescent is assured that all services are confidential and that any necessary follow-up contact will also protect the client's privacy.

§56.15. Civil Rights.

Providers shall make family planning and genetic services available without regard to marital status, parenthood, handicap, age, color, religion, sex, ethnicity, or national origin. The provider must comply with Title VI of the Civil Rights Act of 1964 (Public Law 88 - 352); §504 of the Rehabilitation Act of 1973 (Public Law 93 - 112); The Americans with Disabilities Act of 1990 (Public Law 101 - 336), including all amendments to each; and all regulations issued pursuant to these Acts.

§56.16. Title X Informational and Educational Committees.

Title X contractors that distribute informational and educational materials to clients and/or the community shall establish Informational and Educational (I&E) committees to review the materials. Contractors should include all target populations in the development of educational materials.

(1) Each Title X contractor must maintain an I&E committee of no fewer than five but not more than nine members who are broadly representative of the population of the community for which the materials are intended in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age.

(2) Each I&E committee must review and approve all informational and educational materials developed or made available by the contractor prior to their distribution to assure that the materials are suitable for the population and community for which they are intended and to assure their consistency with the purposes of Title X.

(3) Each I&E committee must review the content of the materials to assure that the information is factually correct. The committee may delegate responsibility for the review of the factual, technical, and clinical accuracy to appropriate contractor staff. However, final approval of the informational and educational material rests with the I&E committee.

(4) Each I&E committee shall keep minutes of its meetings and maintain a written record of its determinations.

(5) Materials provided by contractors must be reviewed and approved by each Title X contractor's I&E committee, since community cultures and standards vary across the state.

(6) Each contractor's I&E committee may meet as a group at a specific time and location, or the members may discuss the materials and make their determinations by telephone conference call.

(7) Each I&E committee shall review and approve informational and educational materials before distribution by the contractor, and meetings shall be scheduled whenever new materials come under consideration, or on a regular basis according to an individual contractor's policy. Contractors' I&E committees are not bound to conduct a minimum number of meetings per year.

§56.17. Contract Requirements for the Title XIX (Medicaid) Family Planning Genetics Program.

(a) A genetic service agency provider may contract with the commission [~~department~~] for Title XIX reimbursement for family planning genetic diagnostic and counseling services under the following conditions.

(1) The medical director of the genetic services agency provider is a clinical geneticist (MD or DO). The clinical geneticist must be board eligible or board certified in clinical genetics by the American Board of Medical Genetics [~~Geneticists~~] (ABMG) and licensed by the Texas Medical Board.

(2) A team of professionals provides the genetic diagnostic and counseling services. The team must consist of [~~at least~~] a clinical geneticist (MD or DO) and at least one of the following: a nurse (RN), [~~a genetic associate (MS),~~] a social worker (MSW), a medical geneticist (PhD), or a genetic counselor (MS). The members of the team must meet the criteria established by ABMG or work under the direct supervision of a clinical geneticist. Administrative and support staff also may [~~also~~] be involved.

(3) (No change.)

(4) The agency provider must arrange for full medical referral services since genetic disorders often encompass several health problems. Independent consultant, laboratory, and radiology services must be billed through the genetic services agency provider under contract with the commission [~~department~~].

(5) Genetic counseling must be provided face-to-face by a clinical geneticist (MD or DO) or a genetic counselor under the direct supervision of a clinical geneticist.

(6) Services provided by a specialized genetics agency provider must be under a written subcontractual agreement with the prime contractor. The commission [~~department~~] has the right to approve all subcontractual agreements.

(7) (No change.)

(b) (No change.)

§56.18. Family Planning Genetics Services Provided.
Family planning genetics services must be prescribed by a physician (MD or DO) and have implications for reproductive decisions. Services may include the following, based on the client's needs:

(1) health history and detailed family genetic health history;

(2) (No change.)

(3) psychosocial genetic assessment;

(4) medical genetic [~~genetics~~] counseling;

(5) (No change.)

(6) follow-up genetic counseling;

(7) - (8) (No change.)

§56.19. Limitations of Family Planning Genetics Services.
For the Title XIX Family Planning Genetics Program, the following types of services are not allowed:

(1) (No change.)

(2) prenatal diagnosis for sex determination of the fetus alone without implications for genetic disorders [~~diseases~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801153
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 458-7111 x6972

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25 TAC §§56.4 - 56.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§56.4. Family Planning Advisory Committee.
§56.5. Maximum Rates and Specific Codes.
§56.6. Range of Methods.
§56.7. Abortion Statement.
§56.8. Requirements for Reimbursement of Family Planning Services.
§56.9. Records Retention.
§56.10. Prompt Service.
§56.11. Freedom of Choice.
§56.12. Confidentiality.
§56.13. Eligibility for Family Planning Services.
§56.14. Consent.
§56.15. Family Planning for Adolescents.
§56.16. Civil Rights.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 26, 2008.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 205. PRODUCT SAFETY

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) proposes amendments to §§205.1 - 205.9, 205.11 - 205.17, the repeal of §205.10, and new §205.10, concerning the regulation of bedding products.

BACKGROUND AND PURPOSE

The amendments are necessary to implement House Bill (HB) 1752 passed during the 79th Legislature, Regular Session (2005), which relate to the regulation of germicidal treatment of secondhand bedding items. HB 1752 amends Health and Safety Code (HSC), Chapter 345, by adding §345.045, entitled "Minimum Sanitary Standards for Germicidal Treatment Permit," which establishes minimum sanitary conditions for businesses holding a germicidal treatment permit. HB 1752 also authorizes the Executive Commissioner of the commission to promulgate rules to establish additional regulatory requirements for sanitary conditions.

Additional amendments are required to implement HB 2471 passed during the 80th Legislature, Regular Session (2007), which relate to the treatment and sale of certain bedding. This bill amends HSC, Chapter 345 by amending the definitions for "new" and "secondhand" and adding a new definition for "floor model." HB 2471 also amended HSC, Chapter 345, by adding §345.0065 "Applicability of Chapter to Floor Model." These amendments exempt floor models from being regulated as secondhand, which formerly required that floor models be germicidally treated and tagged as secondhand bedding.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 205.1 - 205.17 have been reviewed and the department has determined that the reasons

for adopting the sections continue to exist because rules on this subject are needed to regulate the quality of bedding and to protect public health. However, §205.10 is being repealed and is proposed as a new rule.

SECTION-BY-SECTION SUMMARY

Amendments to §205.2 and §205.8 change the definitions of "new" and "secondhand," add a new definition for "floor model," and add §205.8(a)(1)(D), which is necessary due to a change in legislation exempting floor models from regulation as secondhand. Additional amendments to §§205.1, 205.2, 205.4 - 205.9, and 205.12 - 205.17 provide clarification and correction to the rules. Amendments to §205.3 reflect the new Federal Flammability Standards and add recordkeeping requirements to better document the progress of bedding from the manufacturer to the consumer. Repeal of existing §205.10 and the addition of new §205.10 establishes minimum sanitary standards for germicidal treatment operators that germicidally treat ten or fewer items of bedding per week. Amendments to §205.11 clarify language to reflect the two-year term for permits, and implement changes to the minimum sanitary conditions for businesses holding a germicidal treatment permit.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years §§205.1, 205.3 - 205.7, and 205.9 - 205.17 are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Regarding §205.2 and §205.8, there will be an effect on state government which is anticipated to decrease the number of germicidal treatment permits issued by 2%, and would result in a decrease in licensing revenue to the state of $2,090 each year for calendar years one through five. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there will be no negative effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Regarding §205.2 and §205.8, the financial burden of $110 per two year permit term for small and micro-businesses will be alleviated for some small and micro-businesses due to a change in legislation exempting floor models from regulation as secondhand. There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Tennyson has determined that some small businesses are subject to regulation under the proposed rules. However, no additional economic burden is associated with the proposed regulatory changes so no adverse economic impact to small businesses is anticipated. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is a clearer interpretation of the rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposal does not result in any of these adverse effects.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Andrea Lopez, Public Health Sanitation and Consumer Product Safety Group, Policy, Standards, and Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, or by e-mail to Andrea.Lopez@dshs.state.tx.us. Written comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. BEDDING RULES

25 TAC §§205.1 - 205.17

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Health and Safety Code, §345.0435; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The proposed readoption of these rules is authorized by Government Code, §2001.039, which requires each state agency to review and consider for readoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001.

The proposed amendments and new rule affect the Health and Safety Code, Title 5, Chapter 345.

§205.1. Purpose and Scope.

The purpose of these sections is to designate the requirements and the terms, definitions, nomenclature, and conditions as commonly used and

recognized in the manufacture, sale, and distribution of bedding and furniture products and filling materials. Classifications of materials in these regulations are intended to have understandable meaning to regulated businesses and consumers. The definitions used are in conformity with those adopted by the majority of states, Canada, the Federal Trade Commission and the International Association of Bedding and Furniture Law Officials.

§205.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context otherwise specifically requires.

(1) - (2) (No change.)

(3) Bedding--A mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chair bed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, lounge chair pad, utility or all-purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinet pad, bed rest and lounge-type cushion, or a stuffed or filled article that can be used by a human for sleeping or reclining.

(4) - (8) (No change.)

(9) Floor Model--New bedding placed in a retail sales area for display purposes.

(10) [~~(9)~~] Germicidal Treatment Operator--A person who sanitizes used bedding articles or filling materials by a method or process that has been approved by the department.

(11) [~~(10)~~] Importer--A person who on his own account sells or distributes in this state bedding, or filling material to be used in bedding, that was manufactured or processed in a country other than the United States. The term does not include an affiliate or subsidiary if the ownership and name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

(12) [~~(11)~~] Label, law label, labeled, tag and tagged--May be used interchangeably and means any label or tag required to be on or affixed to finished bedding products and processed filling material and on which the information required is to appear.

(13) [~~(12)~~] Manufacturer--A person whose principal business is the manufacture of bedding from new materials for the purpose of resale in this state by a distributor, wholesaler, importer, or retail outlet or subsidiary outlet if the ownership and name are the same as the manufacturer, or if it is an exclusive sales outlet for the manufacturer, or both.

(14) [~~(13)~~] Material--An article, substance, or part of an article or substance, used in the manufacture, repair, or renovation of bedding.

(15) [~~(14)~~] New--Bedding or filling material that has had no previous use in any manner other than previous use as a floor model [~~for any purpose~~].

(16) [~~(15)~~] Pillows and cushions--Any bag, case, or covering which has been stuffed or filled and which is not an integral part of another item of bedding or furniture but which can be used by human beings for sleeping, resting, or reclining purposes. The terms do not apply to pillows or cushions which do not exceed 10 inches in their greatest dimension or have permanently affixed figurines, statuettes, dolls, etc.

(17) [~~(16)~~] Processed filling material--Felt, batting, pad, foam product, quilted product, or any other filling material which has been prepared, manufactured, or processed into a form in which it can be used in articles of bedding.

(18) [~~(17)~~] Processor--A person who manufacturers or processes, and sells in this state or for delivery in this state any filling materials, including felt, batting, pads, or foam, to be used or that could be used in bedding, other than frames or metal springs.

(19) [~~(18)~~] Recycled material--Material that:

(A) is composed of recyclable material or that is derived from post consumer waste; and

(B) may be used in place of raw or virgin filling material in manufacturing, repairing, or renovating bedding.

(20) [~~(19)~~] Renovate--To restore to a former condition or to place in a good state of repair.

(21) [~~(20)~~] Secondhand--Bedding or filling material with previous use in any manner, other than previous use as a floor model.

(22) [~~(21)~~] Sell--Offer, or expose for sale, include in a sale, barter, trade, deliver, consign, lease, possess with intent to sell or dispose of in any commercial manner. For purposes of these sections, lease shall also include the term "rent" when used for commercial purposes.

(23) [~~(22)~~] Wholesaler--A person located outside this state who on his own account sells, distributes, or jobs into this state to another for the purpose of resale bedding or filling material to be used in bedding. This does not include an affiliate or subsidiary if the ownership and the name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

(b) (No change.)

§205.3. General Requirements.

(a) - (b) (No change.)

(c) Each item of bedding and processed filling material shall be labeled in conformity with the requirements of the Act and these regulations. This requirement does not apply to a custom upholstery [~~customupholstery~~] business that does not repair or renovate bedding for resale.

(d) - (e) (No change.)

(f) The terms "all," "pure," "100%," or terms of similar meaning [~~import~~] are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

(g) - (j) (No change.)

(k) Identification and storage of secondhand bedding articles and filling materials shall be as follows:

(1) Persons engaged in the manufacture, distribution, wholesaling, importation, renovation, processing, and/or germicidal treatment shall keep new and secondhand articles and/or materials segregated.

(2) - (3) (No change.)

(l) Mattresses and mattress pads manufactured, renovated or delivered into or within this state for purposes of sale in this state shall meet the federal standard for flammability of mattresses set forth in 16 Code of Federal Regulations, Parts [~~Part~~] 1632 and 1633.

(m) Record keeping.

(1) Persons engaged in the business of selling, leasing, renting, or storing articles of bedding shall retain the purchase order,

sales contract, invoice, receipt, lease, rental agreement, return authorization and other documentation recording each purchase, sale, lease, rental, return, and other transaction of an article of bedding.

(2) Any records and documents required by this subsection shall be made available for inspection by the department and by any law enforcement agency immediately upon request.

(3) Records and documents required by this subsection shall be retained for a period of two years after the sale, lease, rental and other transaction of an article of bedding. Persons engaged in the business of selling, leasing, renting, or storing articles of bedding who cease to do business shall notify the department in writing 30 days prior to such event to advise how they will maintain all records during the minimum two-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A person engaged in the business of selling, leasing, renting, or storing articles of bedding shall notify the department that the person has complied with the department's instructions within 30 days of receiving the instructions or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

§205.4. Labeling Requirements.

(a) It shall be unlawful to make any false or misleading statement on any label or tag required by the Act and these regulations. [~~;~~] It [~~it~~] shall be unlawful for any person to remove, deface, alter, or position any label or tag or statement thereon for the purpose of defeating the provisions of the Act and these regulations, except that the label or tag may be removed by the consumer.

(b) - (j) (No change.)

(k) Labels shall be affixed to the outer covering of bedding articles and shall be so located as to make the label and the information thereon completely and clearly visible to the purchaser at all times. Germicidal treatment label attachment methods shall have prior approval by the department. Specific locations for label attachments shall be as follows:

(1) (No change.)

(2) Articles such as quilted bedspreads, mattress protectors, quilts, etc., packaged in clear or see-through [~~see through~~] packaging material shall be folded in such a manner so that the label and printed matter thereon is visible to the purchaser.

(3) (No change.)

(4) Processed filling material identification tag location is optional, except that it shall be securely attached where clearly visible.

(5) - (7) (No change.)

(8) Attaching the label in a location or manner which, while the article of bedding is on display for sale, conceals the label from open view to the purchaser shall be considered [~~as~~] a willful act to intentionally defeat the intent of the Act and these regulations.

(l) The different types of required labels and illustrations of each are as follows:

(1) The label attached to bedding wholly manufactured from new materials shall have a minimum size of six square inches and shall state the following, plainly stamped or printed in black ink on all white material:

(A) - (D) (No change.)

(2) The label attached to bedding, any part of which is manufactured or renovated from secondhand or recycled material, other than bedding reworked, repaired, or renovated for the owner for the owner's own use, shall be at least 12 square inches and shall state the following, plainly stamped or printed in red ink on all white material:

(A) - (B) (No change.)

(C) shall be in the following form:
Figure: 25 TAC §205.4(l)(2)(C)
[~~Figure: 25 TAC §205.4(l)(2)(C)~~]

(3) The label attached to material or bedding that has been germicidally treated shall be at least 12 square inches and shall state the following, plainly stamped or printed in black ink on all yellow material:

(A) - (F) (No change.)

(G) shall be in the following form:
Figure: 25 TAC §205.4(l)(3)(G)
[~~Figure: 25 TAC §205.4(l)(3)(G)~~]

(4) The processed filling material label is an identification label. The type and material of this label is optional. However, the label shall be visible, the printed matter shall be legible, generic terms shall be used as the descriptive terminology, and the processor's identification number assigned by the department shall be stated. Illustrations of a form for this label follow:
Figure: 25 TAC §205.4(l)(4) (No change.)

§205.5. Definitions and Designations of Filling Materials.

(a) (No change.)

(b) Down.

(1) The term "down" by itself may be used for the soft undercoating of waterfowl consisting of the light fluffy filaments grown from one quill-point but without any quill shaft. It is permissible [~~permissable~~] to use the name of the fowl from which the down is obtained, such as goose down, duck down, etc.

(2) - (4) (No change.)

(5) The tolerance levels for the labeling of down are as follows:

(A) a minimum of 80% down, plumules, and down fiber consisting of: [~~;~~]

(i) [~~consisting of~~] down and plumules--minimum of 70%; and

(ii) [~~consisting of~~] down fiber--minimum of 10%;

(B) the remaining 20% may consist of a combination of the following:

(i) - (iv) (No change.)

(v) residue--maximum 2.0%; and/or

(vi) (No change.)

(6) (No change.)

(c) Feathers.

(1) - (9) (No change.)

(10) Feather mixtures [~~when~~] from two or more species shall be designated by name, character, and percentage by weight of each constituent in order of predominance, or [~~mixtures may be designated~~] by lowest grade as to species of origin (grades in descending order: goose, duck, turkey, and chicken).

(d) Foam.

(1) (No change.)

(2) Foam is polymerized material consisting of a mass of thin-walled cells produced chemically or physically which is created by the interaction of an ester or [~~an~~] ether and a carbamic acid derivative.

(3) The term "synthetic foam" may be used as a definition in lieu of the following generic terms:

(A) - (D) (No change.)

(E) vinyl foam; or [~~and~~]

(F) (No change.)

(4) - (6) (No change.)

(e) Hair.

(1) Hair--The coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats when used in the manufacture of bedding, upholstered furniture, and filling materials. It shall be clean, properly cured, and free from epidermis, excreta, and other foreign or objectionable substances and odors.

(2) (No change.)

(f) Manufactured fibers.

(1) Acetate fiber--Manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92% of hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.

(2) - (17) (No change.)

(g) - (i) (No change.)

(j) Gel. Generic term for any filling material of a semi-solid form, typically encased in a leak proof fabric cover and consisting of a mixture of water or other liquid base, dissolved chemicals, and/or a suspension of other chemicals, which provides special ergonomic and resiliency properties.

(k) (No change.)

(l) Universal definitions. The following terms are common industry definitions for fibers obtained as by-products during the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning. These terms must be preceded by the name of the textile fiber from which it is produced.

(1) - (4) (No change.)

(5) Picker, picker motes, or motes--Matted or tangled masses of fiber resulting from the opening and cleaning of fibers in the opener room of the textile mill.

(6) (No change.)

§205.6. Adjunctive Terms.

(a) - (f) (No change.)

(g) Pieces--Urethane foam and rubber products which have been cut or broken into pieces of indefinite shape, size, or form, but not shredded. The term applies to loose as well as cemented or bonded filling material (e.g., urethane foam pieces, latex foam rubber pieces).

(h) - (k) (No change.)

(l) Waste--By-products or reclaimed materials which have the following characteristics:

(1) cotton waste containing more than 10% of hull, leaf, stem, and pulp; or

(2) (No change.)

(m) (No change.)

§205.7. Suggested Terminology for Various Fiber By-Products.

(a) (No change.)

(b) Examples of terminology for blended filling materials consisting of various unknown kinds and percentages of fibers, threads, fabric pieces, etc., and which have [~~has~~] been processed into a pad or felt form are as follows:

(1) - (4) (No change.)

(c) (No change.)

§205.8. Germicidal Treatment Requirements; Methods.

(a) General Requirements.

(1) Secondhand bedding articles.

(A) - (C) (No change.)

(D) New bedding and new floor model bedding that has also been used for another purpose, or that has been previously sold, leased, rented or otherwise distributed to the public is secondhand bedding and is subject to all secondhand bedding regulations.

(2) Renovated bedding articles.

(A) - (B) (No change.)

(C) The outer covers on secondhand mattresses and box springs to be renovated [~~enovated~~] or rebuilt for resale shall be removed to expose the concealed filling materials. Materials described in paragraph (2)(B) of this subsection shall be removed and discarded. When the chemical method of germicidal treatment is used, the mattresses and box springs shall be treated prior to the installation of new covers. Secondhand covers shall not be reused regardless of the germicidal treatment method.

(b) Treatment methods.

(1) Chemical spray.

(A) (No change.)

(B) Mechanical, compressed air, hand pump, or electric sprayers must be used and they must be of the continuous spray type. No intermittent [~~intermittant~~] spray devices are allowed.

(C) - (G) (No change.)

(2) Dry heat.

(A) (No change.)

(B) The dry heat chamber shall be equipped with a recording clock to accurately record the time and temperature. The clock shall be attached on the outside of the chamber and the heat bulb sending unit must be installed within the chamber at the furthest [~~furtherest~~] point practical from the entry of the heat.

(C) - (D) (No change.)

(3) Steam.

(A) (No change.)

(B) An alternate method may consist of two applications of streaming steam, maintained for a period of one hour each, to be applied at intervals of no [~~not~~] less than six hours and no [~~nor~~] more than 24 hours.

(4) - (6) (No change.)

§205.9. Sanitary Premises.

Every person engaged in the business of manufacturing, renovating, [~~or~~] processing, or germicidally treating bedding and/or bedding materials, except permitted germicidal treatment operators treating 10 or fewer items of bedding each week, shall keep each business location in a sanitary condition by complying with the following minimum requirements.[~~:~~]

(1) (No change.)

(2) All work rooms shall be well-ventilated [~~well ventilated~~], and high dust counts, odors, and stale air shall not be permitted. Dust control measures may include the housing or partitioning of dust-producing [~~dust producing~~] machinery from other work rooms and the installation of metal hoods and extraction fans over dust-producing [~~dust producing~~] machinery.

(3) - (4) (No change.)

(5) Walls and ceilings of all rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of tight, smooth construction; [~~,~~] shall be painted; [~~,~~] and shall be kept clean and in good repair. Cracks or recesses which would tend to harbor vermin and pathogens shall not be allowed.

(6) (No change.)

(7) There shall be no living quarters in the rooms, or opening directly into the rooms, where materials are stored, processed or otherwise used in the manufacturing or renovating of bedding.

(8) (No change.)

(9) Adequate and clean hand-washing [~~hand washing~~] facilities shall be provided. One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every 20 employees or portion thereof up to 100 persons and one lavatory (wash basin) for each additional 25 persons or portions thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

(10) (No change.)

§205.10. Sanitary Premises, Standards for Certain Permitted Germicidal Treatment Operators.

Every person engaged in the business of germicidally treating no more than 10 items of bedding each week shall maintain each business location in a sanitary condition by complying with the following minimum requirements.

(1) Adequate housing and floor space shall be provided to prevent crowding of materials and equipment and to allow for the practice of cleanliness and sanitation. Articles of bedding and processed bedding materials used in bedding shall be securely housed at all times and may not be exposed to the elements.

(2) All work rooms shall be well-ventilated and high dust counts, odors, and stale air shall not be permitted. Dust control measures may include the housing or partitioning of dust producing machinery from other work rooms and the installation of metal hoods and extraction fans over dust-producing machinery.

(3) All work rooms shall be well lighted.

(4) The floors of all rooms in which bedding and materials are stored, processed, or otherwise used in bedding or in the germicidal treatment of bedding, shall be of such construction as to be easily cleaned, and shall be kept clean and in good repair.

(5) Walls and ceilings of all rooms where bedding and materials are stored, processed, or otherwise used in bedding or in the germicidal treatment of bedding, shall be kept clean and in good repair. Cracks or recesses that would tend to harbor vermin and pathogens shall not be allowed.

(6) All buildings, rooms therein, and immediate surroundings shall be kept in neat and clean condition. All rooms and surroundings shall be free of rubbish, trash, discarded equipment, or other unnecessary articles that may promote unsanitary conditions.

(7) There shall be no living quarters in the rooms, or opening directly into the rooms where bedding and materials are stored, processed or otherwise used in bedding or in the germicidal treatment of bedding.

(8) Clean toilet facilities of a type acceptable to the department shall be provided.

(9) Adequate and clean hand-washing facilities shall be provided. One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every 20 employees or portion thereof up to 100 persons and one lavatory (wash basin) for each additional 25 persons or portions thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

(10) A water supply and drinking fountain acceptable to the department shall be provided. Paper cups with dispenser may be used instead of a fountain. The use of a common drinking cup is prohibited.

§205.11. Permit Requirements; Types; Application; Conditions; Suspension.

(a) General requirements.

(1) - (4) (No change.)

(5) [~~Prior to January 1, 2005, the term of all licenses is one-year and expires on the anniversary of the effective date, unless renewed.~~] Effective January 1, 2005, the term of all permits [~~licenses~~] is two years. [~~Some licenses will be renewed for a one-year term in 2005, in a manner to be determined by the department and two years thereafter.~~] The department may prorate permit fees as appropriate to provide for a common expiration date for persons holding and/or applying for more than one permit.

(6) (No change.)

(b) Types of permit and permit fees.

(1) - (3) (No change.)

(4) Wholesaler/Distributor Permit. Required of all wholesalers and distributors of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of articles or units of filling materials the wholesaler/distributor is requesting authorization to ship during the permit period. The fees are set out in [~~Schedule B,~~] subsection (b)(3) of this section.

(5) Importer Permit. Required of all importers of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of imported articles or units of filling materials the importer is requesting authorization to ship during the permit period. The fees are set out [~~in Schedule B~~] in subsection (b)(3) of this section.

(6) - (8) (No change.)

(c) Permit application.

(1) Application for an initial permit or to renew an expiring permit must be made through the department on an approved application form which may be obtained from the Product Safety Program, Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(2) A separate permit application must be completed and submitted for each specific [~~permit applied for at each specific~~] business location or plant location.

(3) (No change.)

(4) Additional information that may be required by the department includes the following:

(A) a copy of current permit(s) [~~permits~~] or license(s) [~~licenses~~] issued by another state[~~,~~] or states;

(B) a copy of the most recent bedding inspection report if the business or plant is located in a city, county, state or country that has bedding laws and regulations and conducts inspections;

(C) - (D) (No change.)

(E) a confirmation of compliance with applicable federal flammability standards for mattresses and mattress pads or test results from an independent testing facility acceptable to the department;

(F) an explanation of the germicidal treatment method to be applied to second-hand articles of bedding; and

(G) (No change.)

(d) Permit conditions.

(1) - (4) (No change.)

(5) Each person required to obtain a permit shall maintain each business location in a sanitary condition free from refuse, dirt contamination, insects, and vermin that complies with §205.9 of this title (relating to Sanitary Premises) or §205.10 of this title (relating to Sanitary Premises, Standards for Certain Permitted Germicidal Treatment Operators), as applicable.

(A) A permit holder who is required to comply with the sanitary premises requirements of §205.9 of this title and also germicidally treats no more than 10 items of bedding each week in the same facility must comply with the sanitary premises requirements of §205.9 of this title.

(B) The holder of a germicidal treatment permit who germicidally treats no more than 10 items of bedding at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under the Texas Health and Safety Code, §345.045(b).

(6) - (7) (No change.)

(e) Permit denial, suspension, revocation.

(1) An application for permit issuance or renewal will be denied by the department if the applicant fails or refuses to provide a complete application, pay the appropriate permit fee, provide requested information or product samples or test results, or if the business location or plant location is not in a sanitary condition in violation of the Act or these [~~and~~] regulations.

(2) (No change.)

(3) A permit may be suspended or revoked by the department if the permit holder fails to maintain the permitted business location or plant location in a sanitary condition; [~~,~~] manufactures or renovates and sells mattresses or mattress pads that do not comply with federal flammability standards; [~~,~~] fails to germicidally treat articles of used bedding prior to resale; [~~,~~] or commits any other or repeated violations of the Act or these regulations.

§205.12. Administrative Penalty.

(a) - (e) (No change.)

(f) Violations shall be placed in one of the following severity levels. [~~:~~]

(1) Critical violation. Severity Level III includes the types of violations that are the most significant and present a threat to public health and safety. The base penalty for a first violation will generally not exceed $10,000 per day, per violation. The same violation continuing after written notification by the department constitutes [~~constitute~~] separate violations. Examples of Severity Level III violations include but are not limited to:

(A) - (J) (No change.)

(2) - (3) (No change.)

(g) - (n) (No change.)

§205.13. Detained or Embargoed Bedding.

(a) - (b) (No change.)

(c) The notice or marking on detained or embargoed bedding must warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the commissioner, an [~~the~~] authorized agent, or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the commissioner, an [~~the~~] authorized agent, or a court.

(e) (No change.)

§205.14. Removal Order for Detained or Embargoed Bedding.

(a) - (c) (No change.)

(d) The commissioner may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment [~~judgement~~] in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the time the department was reimbursed.

§205.15. Condemnation.

Action [~~An action~~] for [~~the~~] condemnation of bedding may be brought before a court in whose jurisdiction the bedding is located, detained, or embargoed if the bedding violates the Act or these regulations.

§205.16. Recall Orders.

(a) - (f) (No change.)

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner[~~,~~] the commissioner may provide for the recall of the bedding. The costs of the recall shall be assessed against the claimant of the bedding or the claimant's agent.

(h) (No change.)

§205.17. Inspection.

(a) To determine compliance with the Act or regulations, an authorized representative, or representatives, may enter a location [~~place~~] at which:

(1) - (3) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801241
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 458-7111 x6972

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25 TAC §205.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Health and Safety Code, §345.0435; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The proposed repeal of this rule is authorized by Government Code, §2001.039, which requires each state agency to review and consider for readoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001.

The proposed repeal affects the Health and Safety Code, Title 5, Chapter 345.

§205.10. Adjustments to the Minimum Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801242
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER F. ACTION BY THE COMMISSION

30 TAC §50.113

The Texas Commission on Environmental Quality (commission) proposes to amend §50.113.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This rulemaking implements House Bill (HB) 2654, 80th Legislature, 2007. HB 2654 amended Texas Water Code (TWC), §27.021 and added new TWC, §27.023 to allow the commission to issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. These legislative changes are intended to promote desalination technology and address the need for public water supply systems to dispose of drinking water treatment residuals. To implement HB 2654, this rulemaking amends §50.113(d).

The amended rule adds two new types of applications and actions to a listing of applications that the commission may act on without holding a contested case hearing. This listing is in §50.113(d). There are two paragraphs under §50.113(d) that are affected by the proposed amendment.

First, the proposed amendment to §50.113(d)(5) will update the list of applications that are not subject to a contested case hearing by adding an application for a Class I injection well used only for the disposal of nonhazardous drinking water treatment residuals. This exception is in addition to the exception for applications for disposal of desalination brine which was added by a previous rulemaking in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8814). Amendment of §50.113(d)(5) also includes updates to reflect use of the term "nonhazardous brine from a desalination operation" instead of "desalination brine," and inserts the word "injection" into the phrase "Class I injection wells," to achieve consistency with the title of TWC, §27.021 as amended by HB 2654.

Second, a new paragraph has been inserted as §50.113(d)(6) with renumbering of subsequent paragraphs. The new paragraph implements part of TWC, §27.023 in HB 2654 that allows the commission to issue a general permit authorizing a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals, without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Removing the opportunity for a contested case hearing may expedite the approval of Class I injection well permits for the disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals. The commission's ability to hold a discretionary hearing under the provisions of TWC, §5.102(b) was not amended by HB 2654.

Changes to 30 TAC Chapters 55, 305 and 331 are also proposed in this issue of the *Texas Register* to implement HB 2654 and to incorporate other changes to facilitate disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals.

SECTION DISCUSSION

§50.113. Applicability and Action on Application.

The proposal would amend §50.113(d)(5) by adding a permit application for a Class I injection well used only for the disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals to the list of applications upon which the commission may act without holding a contested case hearing. The proposal would add §50.113(d)(6) to include the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit, or the authorization for the use of an injection well under a general permit in the list of items upon which the commission may act without holding a contested

case hearing. Section 50.113(d)(6) - (8) will be renumbered as (d)(7) - (9), respectively.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed amendment is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The agency will utilize existing resources to develop rules and guidelines for a general permit to authorize the use of Class I injection wells for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

HB 2654, 80th Legislature, Regular Session allows the commission to issue a general permit to authorize the use of a Class I injection well for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals and allows the Railroad Commission of Texas to authorize the use of these wastes as appropriate injection fluids for enhanced recovery purposes without the necessity of obtaining a permit from the commission. HB 2654 requires agency rules governing the issuance of the general permit including the requirement for the submission of a notice of intent by the prospective permittee. In addition, HB 2654 specifies that the general permit is not subject to the requirements of a contested case hearing. The proposed rulemaking is part of the agency's effort to establish a general permit program authorizing the use of Class I injection wells as specified by the legislation. In addition to this rulemaking, amendments are also proposed for appropriate sections of Chapters 55, 305, and 331. This fiscal note addresses only the fiscal implication of proposed changes to Chapter 50. The fiscal implications for needed amendments to other chapters are addressed in separate fiscal notes.

The proposed rule would comply with the contested case hearing requirements of HB 2654. These administrative changes allow the agency to authorize disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals under a general permit without holding a contested case hearing if all permit requirements are met.

Local governments and state agencies that are suppliers of public drinking water are not expected to experience significant fiscal implications because of the proposed rule. Governmental entities supplying public drinking water are expected to choose the most economical method of disposal of nonhazardous desalination and drinking water residual wastes, and disposal of these wastes in these injection wells is one option among various options available to suppliers of public drinking water regarding waste disposal.

If a local government or state agency chooses to own or operate a Class I injection well qualifying for authorization under the proposed general permit, the proposed rule could streamline the process for the governmental entity by deleting the requirement for contested case hearings, public notice, and public meetings. Savings generated by not holding contested case hearings could be as much as $500,000 although a contested case hearing would likely cost less. Not being required to publish public notices required by individual permits could save as much as $1,000 to $3,000 depending on the circulation size of the newspapers used. Savings generated by not being required to hold a public meeting, if an application had generated sufficient public interest for the agency to require one for an individual permit, could range from $1,700 to $4,700 depending on the cost of notices and the price for renting a meeting place.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from the changes seen in the proposed rule will be to allow desalination projects to come on line in a shorter time frame thus providing an increased supply of public drinking water while continuing to safeguard public health and the environment.

Individuals and business entities that are suppliers of public drinking water are not expected to experience significant fiscal implications because of the proposed rule. Suppliers of public drinking water are expected to choose the most economic method of disposal of nonhazardous desalination concentrate and drinking water treatment residuals, and disposal of these wastes in these injection wells is one option among various options available to suppliers of public drinking water regarding waste disposal.

Large businesses that own or operate these types of injection wells could possibly save both time and money since the proposed rule does not subject them to contested case hearings, requirements of public notice, and requirements for public meetings that would be required under an individual permit. Savings generated by not holding contested case hearings could be as much as $500,000 although a contested case hearing would likely cost less. Public notices required for individual permits could cost as much as $1,000 to $3,000 depending on the circulation size of the newspapers used. If applying for authorization under a general permit, applicants could be expected to save this expense. Applicants for authorization under this general permit could also save on the public meeting costs incurred for individual notices if an application would have had a public meeting under the requirements for an individual permit. These costs could range from $1,700 to $4,700 depending on the number of notices of public meeting that would have been required and the price of rentals for meeting places in the area.

Oil and gas businesses that might utilize enhanced recovery methods by injecting nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals are expected to experience the same cost savings regarding contested case hearings, public notice and public meetings as those experienced by suppliers of public drinking water.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Staff knows of no small or micro-businesses that are owners of Class I wells. The proposed rule establishes that wells authorized under the general permit for Class I injection wells disposing of nonhazardous desalination and drinking water treatment residual wastes are not subject to the requirements of a contested case hearing, requirements of public notice, and requirements of public meetings as are those required by individual permits. If a small or micro-business decides to request authorization under a general permit to own or operate a Class I injection well for nonhazardous desalination concentrate or drinking water treatment residual waste disposal, it should experience the same cost savings associated with contested case hearings, public notices, and public meetings as those experienced by large businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is needed to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not intended to reduce risks to human health from environmental exposure, nor does it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the proposed rulemaking is to implement HB 2654, passed during the 80th Legislature, 2007, and to revise criteria for authorizing Class I nonhazardous wells injecting desalination concentrate and other water treatment residuals from public water systems so that the state's rules are no more stringent than federal Class I nonhazardous injection well regulations. The specific intent of the proposed amendment to Chapter 50 is to address the authority of the commission to take actions regarding the proposed general permit and authorizations under the proposed general permit. The rule substantially advances this purpose by adding notices of intent submitted under §331.203 to the applicability of Chapter 50, Subchapter F. Further, applications for a Class I injection well permit used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well used only for the disposal of nonhazardous brine from desalination operations or drinking water treatment residuals are added to the list of items upon which the commission may act without holding a contested case hearing.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendment would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking does not exceed any standard set by federal law but rather amends the rules so that they are no more stringent or restrictive than the federal regulations. The proposed rule does not exceed the requirements of state law under the TWC, Chapter 27. Further, the proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program. Finally, the rule is not proposed solely under the general powers of the agency, but rather specifically under TWC, §27.023(m), which allows the commission to adopt rules to implement the general permit authorizing use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals and TWC, §27.109, which authorizes the commission to adopt rules to implement TWC, Chapter 27 (regarding Injection Wells), as well as the other general powers of the agency.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKING IMPACT ASSESSMENT

The commission evaluated the proposed amendment to Chapter 50 and performed a preliminary assessment of whether the proposed amendment would constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed amendment is to implement HB 2654, authorizing use of a general permit for Class I injection wells injecting only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. The proposed amendment would substantially advance this purpose by amending §50.113 to add to the list of actions upon which the commission may act without first holding a contested case hearing applications for a Class I injection well permit used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well permit used only for the disposal of nonhazardous brine from desalination operations or drinking water treatment residuals.

Promulgation and enforcement of the proposed amendment would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rule because the proposed amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rule. Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

The commission has no reasonable alternative that could accomplish the specific purpose of addressing the commission's authority to act other than by amending Chapter 50.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 8, 2008 at 10:00 a.m. in Building E Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-030-331-PR. The comment period closes April 14, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ms. Kathryn Hoffman, Waste Permits Division, (512) 239-6890.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§50.113. Applicability and Action on Application.

(a) Applicability. This subchapter applies to applications that are declared administratively complete on or after September 1, 1999. Applications that are declared administratively complete before September 1, 1999, are subject to Subchapter B of this chapter (relating to Action by the Commission).

(b) This chapter does not create a right to a contested case hearing where the opportunity for a contested case hearing does not exist under other law.

(c) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn, or have been denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(d) Without holding a contested case hearing, the commission may act on:

(1) an application for any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) an application for any initial issuance of an air permit for a voluntary emission reduction or electric generating facility;

(3) an application for a hazardous waste permit renewal under §305.631(a)(8) of this title (relating to Renewal);

(4) an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit;

(5) an application for a Class I injection well permit used only for the disposal of nonhazardous [~~desalination~~] brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(6) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injec-

tion Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(7) [~~(6)~~] an application for pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(8) [~~(7)~~] an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(9) [~~(8)~~] other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801189
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 239-0177

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (commission) proposes amendments to §55.101 and §55.201.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking implements House Bill (HB) 2654, 80th Legislature, 2007. HB 2654 amended Texas Water Code (TWC), §27.021 and added new TWC, §27.023 to allow the commission to issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. These legislative changes are intended to promote desalination technology and address the need for public water supply systems to dispose of drinking water treatment residuals. To implement HB 2654, this rulemaking amends §55.101(f) and §55.201(i).

The amended rules add two new types of applications and actions to a listing of applications that the commission may act on without holding a contested case hearing. This listing is in §55.101(f). There are two paragraphs under §55.101(f) that are affected by the proposed amendments. First, the proposed amendment to §55.101(f)(4) will update the list of applications that are not subject to a contested case hearing by adding an application for a Class I injection well used only for the disposal of nonhazardous drinking water treatment residuals. This exception is in addition to the exception for applications for disposal of desalination brine which was added by a previous rulemaking in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8817). Amendment of §55.101(f)(4) also includes updates to reflect use of the term "nonhazardous brine from a desalination operation" instead of "desalination brine," and inserts the word "injection" into the phrase "Class I injection wells," to achieve consistency with the title of TWC, §27.021 as amended by HB 2654.

Second, a new paragraph has been inserted as §55.101(f)(5) with renumbering of the subsequent paragraph. The new paragraph implements part of TWC, §27.023 in HB 2654 that allows the commission to issue a general permit authorizing a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals, without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Removing the opportunity for a contested case hearing may expedite the approval of Class I injection well permits for the disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals. The commission's ability to hold a discretionary hearing under the provisions of TWC, §5.102(b) was not amended by HB 2654.

Changes to 30 TAC Chapters 50, 305 and 331 are also proposed in this issue of the *Texas Register* to implement HB 2654 and to incorporate other changes to facilitate disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals.

SECTION BY SECTION DISCUSSION

§55.101. Applicability.

The proposal would amend §55.101(f)(4) by adding a permit application for a Class I injection well used only for the disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals to the list of applications upon which the commission may act without holding a contested case hearing. The proposal would add §55.101(f)(5) to include the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit, or the authorization for the use of an injection well under a general permit in the list of items upon which the commission may act without holding a contested case hearing. Current paragraph §55.101(f)(5) will be renumbered as paragraph (6). Proposed §55.101(f)(5) implements part of TWC, §27.023 in HB 2654 that allows the commission to issue a general permit authorizing a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals, without providing the opportunity for a contested case hearing.

§55.201. Subchapter F, Requests for Reconsideration or Contested Case Hearing.

The proposal would amend §55.201(i)(6) by adding a permit application for a Class I injection well used only for the disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals to the list of applications for which there is no right to a contested case hearing. The proposal would add §55.201(i)(7) to include the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit, or the authorization for the use of an injection well under a general permit in the list of items for which there is no right to a contested case hearing. Current paragraphs (7) - (9) will be renumbered as paragraphs (8) - (10), respectively.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The agency will utilize existing resources to develop rules and guidelines for a general permit to authorize the use of Class I injection wells for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

HB 2654, 80th Legislature, Regular Session allows the commission to issue a general permit to authorize the use of a Class I injection well for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals and authorizes the use of these wastes as appropriate injection fluids for enhanced oil and gas recovery purposes without obtaining a permit. HB 2654 requires the agency to issue rules governing the issuance of the general permit and establish the requirement for a notice of intent covered by the general permit. In addition, HB 2654 specifies that the general permit is not subject to the requirements of a contested case hearing. The proposed rulemaking is part of the agency's effort to establish a general permit program authorizing the use of Class I injection wells as specified by the legislation. In addition to this rulemaking, amendments are also proposed for appropriate sections of Chapters 50, 305, and 331. This fiscal note addresses only the fiscal implication of proposed changes to Chapter 55. The fiscal implications for needed amendments to other chapters are addressed in separate fiscal notes.

The proposed rules would comply with the notice of intent and contested case hearing requirements of HB 2654. These administrative changes allow the agency to authorize disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals under a general permit without holding a contested case hearing if all permit requirements are met.

Local governments and state agencies that are suppliers of public drinking water are not expected to experience significant fiscal implications because of the proposed rules. Governmental entities supplying public drinking water are expected to choose the most economical method of disposal of nonhazardous desalination and drinking water residual wastes, and disposal of these wastes in these injection wells is one option among various options available to suppliers of public drinking water regarding waste disposal.

If a local government or state agency chooses to own or operate a Class I injection well qualifying for authorization under the proposed general permit, the proposed rules could streamline the process for the governmental entity by not subjecting it to a requirement for contested case hearings, public notice, and public meetings. Savings generated by not holding contested case hearings could be as much as $500,000 although a contested case hearing would likely cost less. Not being required to publish public notices required by individual permits could save as much as $1,000 to $3,000 depending on the circulation size of the newspapers used. Savings generated by not being required to hold a public meeting, if an application had generated sufficient public interest for the agency to require one for an individual permit, could range from $1,700 to $4,700 depending on the cost of notices and the price for renting a meeting place.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be to allow desalination projects and operations requiring the disposal of nohazardous drinking water treatment residuals to come on line in a shorter time frame thus providing an increased supply of public drinking water while continuing to safeguard public health and the environment.

Individuals and business entities that are suppliers of public drinking water are not expected to experience significant fiscal implications because of the proposed rules. Suppliers of public drinking water are expected to choose the most economic method of disposal of nonhazardous desalination concentrate and drinking water treatment residuals, and disposal of these wastes in these injection wells is one option among various options available to suppliers of public drinking water regarding waste disposal.

Large businesses that own or operate these types of injection wells could possibly save both time and money since the proposed rules do not subject them to contested case hearings, requirements of public notice, and requirements for public meetings that would be required under an individual permit. Savings generated by not holding contested case hearings could be as much as $500,000 although a contested case hearing would likely cost less. Public notices required for individual permits could cost as much as $1,000 to $3,000 depending on the circulation size of the newspapers used. If applying for authorization under a general permit, applicants could be expected to save this expense. Applicants for authorization under this general permit could also save on the public meeting costs incurred for individual notices if an application would have had a public meeting under the requirements for an individual permit. These costs could range from $1,700 to $4,700 depending on the number of notices of public meeting that would have been required and the price of rentals for meeting places in the area.

Oil and gas businesses that might utilize enhanced recovery methods by injecting nonhazardous desalination concentrate or drinking water treatment residuals are expected to experience the same cost savings regarding contested case hearings, public notice and public meetings as those experienced by suppliers of public drinking water.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Staff knows of no small or micro-businesses that are owners of Class I wells. The proposed rules establish that wells authorized under the general permit for Class I injection wells disposing of nonhazardous desalination and drinking water treatment residual wastes are not subject to the requirements of a contested case hearing, requirements of public notice, and requirements of public meetings as are those required by individual permits. If a small or micro-business decides to request authorization under a general permit to own or operate a Class I injection well for nonhazardous desalination concentrate or drinking water treatment residual waste disposal, it should experience the same cost savings associated with contested case hearings, public notices, and public meetings as those experienced by large businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are needed to comply with state law and do not adversely affect a small or micro-business

in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not intended to reduce risks to human health from environmental exposure, nor does it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the proposed rulemaking is to implement HB 2654, passed during the 80th Legislature, 2007, and to revise criteria for authorizing Class I nonhazardous wells injecting desalination concentrate and other water treatment residuals from public water systems so that the state's rules are no more stringent than federal Class I nonhazardous injection well regulations. The specific intent of the proposed amendments to Chapter 55 is to address certain procedural rights regarding applications for Class I injection well permits used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well authorized to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. The rule substantially advances this purpose by adding notices of intent submitted under §331.203 to the applicability of Chapter 55, Subchapters D - G and by adding to the list of actions for which there is no right to a contested case hearing applications for a Class I injection well permit used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well used only for the disposal of nonhazardous brine from desalination operations or drinking water treatment residuals.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking does not exceed any standard set by federal law but rather amends the rules so that they are no more stringent or restrictive than the federal regulations. The rules proposed do not exceed the requirements of state law under TWC, Chapter 27. Further, the rules proposed do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program. Finally, the rule is not proposed solely under the general powers of the agency, but rather specifically under TWC, §27.023(m), which allows the commission to adopt rules to implement the general permit authorizing use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals and TWC, §27.109, which authorizes the commission to adopt rules to implement TWC, Chapter 27, as well as the other general powers of the agency.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKING IMPACT ASSESSMENT

The commission evaluated the proposed amendments to Chapter 55 and performed a preliminary assessment of whether the amendments would constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed amendments is to implement HB 2654, authorizing use of a general permit for Class I injection wells injecting only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. The proposed amendments would substantially advance this purpose by amending §55.201 to add to the list of actions for which there is no right to a contested case hearing applications for a Class I injection well permit used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well used only for the disposal of nonhazardous brine from desalination operations or drinking water treatment residuals.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking because the proposed amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rulemaking. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

The commission has no reasonable alternative that could accomplish the specific purpose of addressing certain procedural rights regarding applications for Class I injection well permits used only for the disposal of nonhazardous desalination concentrate or drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well authorized to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. These procedural issues regarding permit applications and notices of intent can only be affected through amendments to the commission's rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 8, 2008 at 10:00 a.m. in Building E Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-030-331-PR. The comment period closes April 14, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ms. Kathryn Hoffman, Waste Permits Division, (512) 239-6890.

SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§55.101. Applicability.

(a) - (e) (No change.)

(f) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) - (3) (No change.)

(4) applications for Class I injection well permits used only for the disposal of nonhazardous [~~desalination~~] brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells; [~~and~~]

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6) [~~(5)~~] applications where the opportunity for a contested case hearing does not exist under other laws.

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) - (h) (No change.)

(i) Applications for which there is no right to a contested case hearing include:

(1) - (5) (No change.)

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous [~~desalination~~] brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) [~~(7)~~] an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(9) [~~(8)~~] an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(10) [~~(9)~~] other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 217. DESIGN CRITERIA FOR DOMESTIC WASTEWATER SYSTEMS

The Texas Commission on Environmental Quality (commission) proposes new §§217.1 - 217.17, 217.31 - 217.39, 217.51 - 217.70, 217.91 - 217.100, 217.121 - 217.129, 217.151 - 217.164, 217.181 - 217.193, 217.201 - 217.213, 217.241 - 217.252, 217.271 - 217.283, 217.291 - 217.300, and 217.321 - 217.333.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Proposed new Chapter 217, *Design Criteria for Domestic Wastewater Systems*, has three major goals: implementing the commission's goal of having all water related rules in the Chapter 200 series by repealing 30 TAC Chapter 317 and proposing a new chapter; bringing the standards and criteria for wastewater collection systems and treatment facilities up-to-date with current engineering practices and technology; and updating the rules to reflect the current permitting practices of the commission.

The commission last comprehensively revised Chapter 317 in 1986. Since then, minor revisions in 1988, 1990, and 1994, have addressed specific concerns, but did not seek to bring the whole chapter in line with advances in wastewater technologies. These proposed rules incorporate those advances. Additionally, revisions are needed to address requirements in current wastewater treatment facility discharge permits that are not addressed by Chapter 317 requirements.

These new rules will ease the administrative burden on the commission by providing additional specific criteria for building or modifying wastewater collection systems and treatment facilities. The proposed rules provide minimum design standards for wastewater collection and treatment. The criteria require a licensed professional engineer to design the systems and facilities.

The proposed rules also allow the executive director to approve variances for innovative technology on a case-by-case basis. Approval may include requirements for pilot studies, demonstration projects, and/or performance bonds. If the executive director grants conditional approval and recognizes after a reasonable time that the technology meets the design standards, a performance bond would no longer be required. The objectives of these rules are to ensure that wastewater collection systems and treatment facilities designed using innovative technology will be protective of human health and environment, as well as cost effective.

The proposed rules also provide flexibility for the approval of nonconforming technology, which is defined in this rulemaking as technology that is not addressed in or does not conform to the design criteria in this chapter, but produces effluent that protects human health and environment. The rule also establishes criteria for a treatment facility's use of reclaimed water and establishes design criteria for reclaimed water use, as authorized by 30 TAC Chapter 210, Use of Reclaimed Water.

Proposed new Chapter 217 eliminates the use of appendices. The information that was in Chapter 317 appendices has been incorporated into the body of the rule. This format groups all like requirements together and improves readability.

For 180 days after the effective date of this rulemaking, the executive director will grant variance requests that meet the design criteria of Chapter 317 for any project that was in its design phase when these rules are adopted. Projects that are in the design phase will not have to be re-engineered. To be granted, variances must be protective of human health and the environment.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes the repeal of Chapter 317, Design Criteria for Sewage Systems.

SECTION BY SECTION DISCUSSION

The commission proposes to repeal Chapter 317. However, the commission will retain some of the existing Chapter 317 requirements and move these requirements to proposed new Chapter 217. For clarity and readability, the commission proposes to reorganize, reformat, and revise Chapter 317 provisions to bring them up-to-date with current agency rule standards regarding style, formatting, and structure. The commission also proposes to amend some of the Chapter 317 requirements and add new requirements that would bring the design criteria up-to-date with current technology and engineering practice.

Many of the modifications to the provisions being moved to Chapter 217 allow increased flexibility in designing wastewater collection systems and treatment facilities. By providing more flexibility in design, a system or facility will be better able to meet the current and future needs of the community for which the system or facility is designed. Owners need more flexibility to meet changing and more site-specific effluent limitations. Increased flexibility will also allow designs to incorporate evolving technology.

Unless common industry standard uses a specific term, the commission proposes to change the following terms throughout the rule: "pond" to "lagoon;" "plant" to "facility;" "lines" to "pipe;" "sewage system" or "sewerage system" to "collection system;" and "permittee" to "owner." The commission proposes these changes for consistency with other rules and readability.

Additionally, the commission proposes to change the word "commission" to "executive director" where appropriate in the proposed rule to conform to current agency rule standards. The term "executive director," as defined in 30 TAC Chapter 3, means the executive director of the commission or any authorized individual designated to act for the executive director. The agency uses the term "executive director" in rules to denote any actions carried out by the executive director's staff.

SUBCHAPTER A. ADMINISTRATIVE REQUIREMENTS

Subchapter A consolidates and streamlines the administrative requirements relating to collection systems and treatment facilities.

Proposed new §217.1, Applicability, establishes that Chapter 217 applies to any person who proposes to construct facilities that will collect, transport, treat, or dispose of domestic wastewater. This section contains the specific requirements for the administrative processes that govern the implementation of this chapter. For 180 days after the effective date of this rule, the executive director will grant variance requests that meet the design criteria of Chapter 317 for any project that is in its design phase when this rule is adopted. This section also states that Chapter 217 does not apply to facilities constructed to comply with non-domestic wastewater permits or constructed under 30 TAC Chapter 285, On-Site Sewage Facilities.

Proposed new §217.2, Definitions, defines terms as used in this chapter. The definitions for these words are consistent with wastewater industry standards.

Proposed new §217.3, Purpose, explains that these design criteria are minimum requirements necessary for domestic wastewater collection, treatment, and disposal systems to meet state water quality standards. In order for the executive director to evaluate a project, the plans, specifications, and reports for a proposed project must meet the requirements of this chapter. The executive director may require more stringent criteria than those in this chapter, if necessary to meet public health and water quality goals.

Proposed new §217.4, Variances, states the requirements for applying for and reviewing variances. The rule clarifies and expands the former Chapter 317 variance requirements.

Proposed new §217.4(a) requires that the report include all requested variances from the requirements of this chapter.

Proposed new §217.4(b) requires that a technical justification be included for any request for a variance.

Proposed new §217.4(c) authorizes the executive director to deny a variance or require additional protective measures if the executive director determines that the variance would result in a potential compromise of public health or environment.

Proposed new §217.4(d) states that the executive director may not grant or approve a variance from any expressed prohibition within this chapter. The executive director determined that the prohibitions in proposed Chapter 217 are necessary to protect public health and environment. The commission proposes this provision to provide notice to the regulated community.

Proposed new §217.4(e) provides that a variance is conditionally approved if the executive director does not notify the owner in writing within 30 days that further information is requested or that the variance is denied. The commission proposes 30 days instead of the 10 days allowed in Chapter 317 to allow sufficient time for the executive director to complete a thorough review of a variance request.

Proposed new §217.4(f) provides that any plans and specifications that do not meet the conditions in subsections (c) and (d) are not eligible for the automatic approval process in subsection (e).

Proposed new §217.4(g) provides that any plans and specifications that include design elements that require an affirmative approval are not eligible for the automatic approval process in subsection (e).

Proposed new §217.5, Plans and Specifications General Requirements, explains how plans and specifications approval relates to wastewater permits.

Proposed new §217.5(a) requires that the effluent limits used as the basis of the plans and specifications for a facility be at least as stringent as the effluent limits in the associated wastewater permit. This requirement ensures that a treatment facility will meet the effluent limits in the current wastewater permit, but allows the owner the flexibility to design to a higher standard to meet future needs, such as population growth, industrial development, more stringent effluent limits, or other contingencies.

Proposed new §217.5(b) expressly states that an owner is not required to submit plans and specifications for a proposed facility prior to the commission issuing a wastewater permit. Under

the Chapter 317 rules, the question regarding when plans and specifications must be submitted arose in contested case hearings. This requirement specifically states that an owner has no obligation to submit plans and specifications prior to receiving an issued permit. Because the preparation of plans and specification is costly, the commission will not require an owner to submit them prior to knowing that the facility is authorized and what effluent limits and other conditions the issued permit will ultimately require.

Proposed new §217.5(c) explains that approval of plans and specifications under this chapter does not relieve the owner of the responsibility to obtain a wastewater permit or any other authorization required by Texas Water Code, Chapter 26. The commission has made this provision more specific than the requirement in Chapter 317 so that an owner knows additional authorizations may be needed.

Proposed new §217.5(d) specifies that the executive director's approval of a wastewater permit does not relieve an owner of the responsibility to obtain plans and specifications approval of a facility before commencing construction.

Proposed new §217.5(e) requires that a facility's design meet all the design requirements in the associated wastewater permit. Design requirements are sometimes added to wastewater permits to ensure compliance with specific effluent limitations.

Proposed new §217.6, Submittal Requirements and Review Process, outlines the procedure an owner must follow to submit a project for the executive director's review and the process that the review will take.

Proposed new §217.6(a) enumerates the elements required in the transmittal letter and names the recipients as the executive director and the appropriate regional office. This list is similar to the requirements of Chapter 317 with the exception of an additional requirement to add all requested variances to the transmittal letter.

Proposed new §217.6(b) states that the executive director may review any facility's plans and specifications. This requirement states that although the executive director may not review all plans and specifications, all are subject to review. The commission proposes to remove the list of factors that were listed in Chapter 317, because it is not an exhaustive list.

Proposed new §217.6(c) states that an owner is not required to submit plans and specifications unless the owner receives a written request from the executive director within 30 days after submitting a transmittal letter. The commission proposes to change the 10-day approval to 30 days to allow staff adequate time to review a transmittal letter and determine if a full plans and specifications review is warranted.

Proposed new §217.6(d) is a requirement that an owner must respond to a request for additional information or plans and specifications within 30 days after receiving the executive director's request. The 30-day deadline for submittal of plans and specifications or additional information is intended to make the review process more efficient.

Proposed new §217.7, Types of Plans and Specifications Approvals, lists the ways the executive director may approve plans and specifications.

Proposed new §217.7(a) states that a plans and specifications approval does not relieve an owner of the responsibility for designing, constructing, and operating a facility in accordance with commission rules and the associated wastewater permit.

Proposed new §217.7(b) explains that there are three types of plans and specifications approval that may be granted by the executive director: standard approval for plans and specifications with no requested variances; approval of innovative or nonconforming technologies; and conditional approval based on specific parameters.

Proposed new §217.7(b)(1) requires the executive director grant a standard approval for plans and specifications that comply with all applicable parts of the design criteria listed in these rules.

Proposed new §217.7(b)(2) authorizes the executive director to grant approval for innovative or nonconforming technology after the executive director evaluates the supporting documentation and determines that the innovative or nonconforming technology will be as protective of public health and environment as the design criteria in this chapter.

Proposed new §217.7(b)(2)(A)(iv) authorizes the executive director to require evidence of an acceptable two-year performance bond that insures the performance of the innovative or nonconforming technology. This provision ensures that a wastewater facility will have funds available to replace a failed unit or facility if an innovative or nonconforming technology fails. The provision allows owners the flexibility to use innovative and nonconforming technology without threatening public health or environment.

Proposed new §217.7(b)(3) contains the provisions regarding conditional approvals. A conditional approval grants approval for a set of plans and specifications that the executive director determined may work only in certain circumstances. A conditional approval will contain conditions, stipulations, or restrictions that are necessary to ensure compliance with this chapter and protect human health and environment. The commission proposes to remove the following language from the Chapter 217 requirements, "Any conditional approval granted may be issued for a specific set of flow situations, wastewater characteristics, and/or required effluent quality." Because these items are examples, they are more appropriately included in this preamble rather than the rule.

Proposed new §217.8, Municipality Reviews, allows certain municipalities to apply for authorization to perform technical reviews of wastewater treatment collection systems within their boundaries, and incorporates requirements of Texas Water Code, §26.034(d) and (e).

Proposed new §217.8(g)(8), requires a municipality whose review authority is revoked to inform all applicants for new projects in its jurisdiction of the requirement to contact the executive director for review and approval. The commission proposes this section to ensure that owners are aware of the proper review authority.

Proposed new §217.9, Texas Water Development Board Reviews, provides that if the Texas Water Development Board reviews and approves plans and specifications, in accordance with Texas Water Code, §17.276(d), the owner must send a copy of the approval to the executive director. This section ensures that the agency is aware of facilities approved by the Texas Water Development Board.

Proposed new §217.10, Final Engineering Design Report, contains the requirements for the final engineering design report (re-

port). The rule provides that the report contain the necessary information for a staff engineer to evaluate a project.

Proposed new §217.10(a) requires that an owner submit a report for each facility or system that is proposed for new construction, expansion, re-rating, or major modification.

Proposed new §217.10(b) requires that the report be signed, sealed, and dated by the engineer that prepared the report.

Proposed new §217.10(c) requires the report to include information and data used to comply with this chapter or to justify variances.

Proposed new §217.10(d) requires that an owner submit any additional requested information within 30 days after the request. This added requirement makes the plans and specification review process more efficient.

The commission proposes not to include the requirements for a preliminary engineering report from Chapter 317 in proposed new Chapter 217. Staff has found that a preliminary engineering report adds cost and time to the review process, but adds little value. Discussions between staff engineers and design engineers resolve most issues.

In proposed new §217.10(e) the commission specifies a list of what is required in the report for wastewater collection systems. These requirements ensure the executive director has sufficient information to evaluate the proposed plans and specifications. For clarity, the new rule proposes separate lists of required elements in the reports for wastewater collection systems and treatment facilities.

In proposed new §217.10(f) the commission specifies a list of what is required in the report for wastewater treatment facilities. These requirements ensure the executive director has sufficient information to evaluate the proposed plans and specifications. For clarity, the new rule proposes separate lists of required elements in the reports for wastewater collection systems and treatment facilities.

Proposed new §217.11, Construction of an Approved Facility, states that approval of plans and specifications alone do not imply that construction of the facility may begin.

Proposed new §217.11(a) states that construction must not begin on a facility with approved plans and specifications until the executive director issues a wastewater permit, unless the commission authorized the applicant to construct before permit issuance, under Texas Water Code, §26.027. In most instances, the wastewater permit will be issued before the plans and specifications review, but this requirement covers the contingency that the review may precede the issuance of the permit. This requirement will not affect collection system construction since there is no corresponding permit for collection systems.

Proposed new §217.11(b) requires an owner to obtain plans and specifications approval before the facility may begin constructing or operating at the next permit phase. This requirement ensures consistency between phases included in the wastewater permit, plans and specifications review, and construction. This requirement will not affect collection system construction since there is no corresponding permit for collection systems.

Proposed new §217.11(c) requires that phased construction of a facility correspond to phases included in the associated wastewater permit. If an owner desires to phase construction differently, the owner must request a variance through the procedure outlined in §217.4. This requirement provides notice that the executive director's approval will be based on the phases approved in the issued wastewater permit. This requirement will not affect collection system construction since there is no corresponding permit for collection systems.

Proposed new §217.11(d) prohibits a collection system or treatment facility from creating a bypass that discharges untreated or partially treated wastewater during construction without a commission order. This requirement provides that construction does not justify a discharge of untreated or partially treated wastewater. This requirement applies equally to treatment facilities and collection systems.

Proposed new §217.11(e) states that an owner must meet the design criteria in effect at the time that the plans and specifications for a new or modified system or facility are submitted to the executive director. This requirement eliminates any ambiguity regarding what design criteria apply to a facility or collection system's plans and specifications. This requirement applies equally to treatment facilities and collection systems.

Proposed new §217.11(f) states that an owner is subject to the design criteria in place at the time a new permit application is submitted or when plans and specifications are submitted for approval if the owner's wastewater permit was allowed to lapse or the owner failed to get a plans and specifications approval when the facility was built.

Proposed new §217.11(g) requires the owner of a collection system to meet the collection system design criteria in effect when it is discovered that the plans and specifications of the system have not been approved. Subsections (f) and (g) prevent an owner from claiming to comply with rules that have been superseded.

Proposed new §217.12, Substantial Design Changes, specifies how to address changes to approved plans and specifications.

Proposed new §217.12(a) defines substantial design change. Minor changes dictated by things such as material substitutions, (e.g., cast aluminum walkways instead of steel) unforeseen site anomalies (i.e., an underground boulder in the path of the collection system), and minor design changes (e.g., installing a board fence instead of a chain link fence) will not be submitted to staff engineers for review. Staff engineers plan to review only those design changes that may affect the way a collection system or a treatment facility operates. Some examples of substantial design changes are adding a treatment unit, switching from chlorine disinfection to ultraviolet disinfection, or including fifty extra connections in a collection system.

Proposed new §217.12(b) requires that the request for approval of a substantial design change include the dated signature and seal of an engineer.

Proposed new §217.12(c) authorizes the executive director to deny the substantial design change or require more stringent criteria as necessary to ensure protection of public health or environment.

Proposed new §217.12(d) notifies the regulated community that the executive director may not approve a design change that violates an expressed prohibition in this chapter.

Proposed new §217.12(e) states that a substantial design change is approved unless the executive director notifies the owner in writing within 30 days that further information is requested or that the substantial design change is denied. The

commission proposes 30 days to allow sufficient time for the executive director to review a substantial design change request.

Proposed new §217.13, Final Construction Drawings and Technical Specifications, divides construction drawings for collection systems and treatment facilities into two different paragraphs for clarity.

Proposed new §217.13(a) states that an owner must submit final construction drawings and technical specifications only if requested by the executive director. The executive director will request final construction drawings or technical specifications if there is a question about the treatment facility or collection system's ability to protect human health or environment.

Proposed new §217.13(b) requires that any final construction drawings or technical specifications submitted must include the dated signature and seal of an engineer.

Proposed new §217.13(c) lists the items that must be submitted with the final construction drawings and technical specifications. Because the lists are different for collection systems and treatment facilities and for new and modified projects, the lists are divided. Section 217.13(c)(1) lists the items for a new collection system; §217.13(c)(2) lists the items for a new treatment facility; §217.13(c)(3) lists the items for a modified collection system; and §217.13(c)(4) lists the items for a modified treatment facility.

Proposed new §217.14, Completion Notice, requires an owner to provide notice to the executive director when construction of a collection system or treatment facility is complete.

Proposed new §217.14(a) lists the elements that must be included in a completion notice.

Proposed new §217.14(b) requires the completion notice to include all deviations from the approved plans and specifications and substantial design changes. The completion notice must also certify that any change not submitted for approval does not qualify as substantial design change.

Proposed new §217.15, Inspection, notifies the regulated community that the executive director may inspect a project at any point during construction to determine compliance with the project's plans and specifications, report, approval letters, or other requirements of this chapter.

Proposed new §217.16, Treatment Facility Operation and Maintenance Manual, states that the requirements for an operations and maintenance manual, including emergency procedures. The rule expands the requirements from Chapter 317 to outline more specifically what is required to ensure enough detail for operators to manage the day-to-day and emergency operation of a facility.

Proposed new §217.17, Collection System Records, requires that a collection system owner keep a specific set of records necessary to facilitate operation during the expected life of the system.

SUBCHAPTER B. TREATMENT FACILITY DESIGN REQUIREMENTS

Subchapter B updates the Chapter 317 treatment facility design requirements. A significant amount of flexibility has been incorporated into the design requirements while maintaining the standard of protecting human health and environment.

Proposed new §217.31, Applicability, contains the design values that must be used to determine the size of any wastewater treatment component. Additionally, this section specifically applies Subchapter B to designs for new treatment facilities, upgrades of existing facilities, and re-ratings of existing facilities.

Proposed new §217.32, Organic Loadings and Flows, states the organic loading and flow values that must be used to design a wastewater treatment facility. This section updates past commission practices and procedures, incorporates new procedures requested by the regulated community, and adds new requirements from Chapter 319, General Regulations Incorporated into Permits.

Proposed new §217.32(a) prescribes the method to determine design requirements if there are no pre-existing loading and flow data on which to base calculations. Table B.1 is included to simplify selection of the correct parameters.

Proposed §217.32(b) authorizes an owner to use data from an existing facility in accordance with §217.33, Flow Measurement, when constructing a new facility to serve the same area as an existing facility with sufficient historical data. This requirement allows the design of a wastewater treatment facility to be based on actual data.

Proposed new §217.33, Flow Measurement, outlines the requirements for flow measurement in a treatment facility. Accurate flow measurement is necessary for both reporting and efficient operations.

Proposed new §217.33(a) requires that each facility have a method to accurately measure effluent flow.

Proposed new §217.33(b) requires that the flow-measuring device be located for easy inspection and maintenance.

Proposed new §217.33(c) lists the requirements for primary and secondary flow-measuring devices.

Proposed new §217.34, Re-Rating, Upgrading, or Modifying an Existing Facility, authorizes existing facilities that are being modified or re-rated to meet new permit conditions to justify the size of existing or proposed treatment components by using historical data as the design basis. This section updates past commission practices and procedures and adds new requirements from Chapter 319.

Proposed new §217.34(1) lists the requirements that flow data must meet before being used as the basis for design criteria.

Proposed new §217.34(2) lists the requirements that loading data must meet before being used as the basis for design criteria.

Proposed new §217.35, One Hundred-Year Flood Plain Requirements, lists the requirements related to a treatment facility located in or near a flood plain.

Proposed new §217.35(a) requires that the site plan for a proposed wastewater facility include the 100-year flood plain if there is a 100-year flood plain within 1,000 feet of the proposed site. The subsection further outlines the requirements for the 100-year flood plain determination. The subsection also states that FEMA maps are prima facie evidence of flood plain locations. The owner must determine the elevation and design to prevent flood damage to the facility or allow unanticipated discharges of untreated or partially treated wastewater.

Proposed new §217.35(b) requires that the hydraulic profile of the wastewater facility show the 100-year water surface elevation. This requirement is to enable the commission to confirm the protection of all units and the ability of the facility to operate during a 100-year flood event.

Proposed new §217.35(c) prohibits the executive director from approving a proposed treatment unit within the 100-year flood plain unless satisfactory measures to protect all open process tanks and electric units are provided as part of the proposed design. This requirement provides notice to the regulated community that protection from a 100-year flood event is required.

Proposed new §217.36, Emergency Power Requirements, outlines the requirements for emergency power supply for treatment facility components.

Proposed new §217.36(a) requires that an owner obtain the power outage records from the appropriate power company(s) showing the reliability of the power service for the facility. Chapter 317 required the commission to collect the data. The owner has the responsibility to provide the records regarding the power service reliability to the executive director.

Proposed new §217.36(b) requires the power reliability documentation to be included in the report. The executive director will then review the documentation and determine the power service's reliability.

Proposed new §217.36(c) lists the required procedure when the executive director determines that the power supply is unreliable. The commission requires the facility to incorporate an on-site, automatically-starting generator, capable of ensuring continuous operation of all critical facility components for a period equal to the longest power outage in the power records if the executive director determines the power supply is unreliable.

Proposed new §217.36(c)(4) contains the exceptions to the auxiliary power generator requirements for wastewater treatment facilities and off-site lift stations. Included in this paragraph are the requirements for qualifying for an exemption to the requirement for an automatically-starting generator. These requirements were not in Chapter 317. The new requirements are to ensure the disinfection units can operate during a power outage, a minimum air supply is maintained, and pumping requirements are met to prevent an unauthorized discharge into or adjacent to water in the state.

Proposed new §217.37, Disinfection System Power Reliability, contains additional requirements for power reliability and emergency power for disinfection units because their operation is vital even under emergency conditions.

Proposed new §217.38, Buffer Zones and Odor Abatement, lists the requirements for buffer zones and other abatement requirements to manage odor.

Proposed new §217.38(a) states that the buffer zone restrictions in §309.13 apply to all construction of wastewater treatment facilities.

Proposed new §217.38(b) requires the report include any design for odor abatement facilities intended to attain compliance with permit buffer zone requirements. This provision ensures that this information is included in the report and available for staff review.

Proposed new §217.38(c) requires that the executive director consider all odor abatement measures as nonconforming or innovative technologies and review them on a case-by-case basis under §217.7(b)(2), because of the site-specific nature of potential odor issues for a wastewater treatment facility.

Proposed new §217.39, Facility Use of Reclaimed Water, requires the use of reclaimed water for equipment washing and irrigating the treatment facility grounds. It also offers the option to use reclaimed water for any other suitable purpose.

Proposed new §217.39(a) specifies that all facilities designed after the effective date of these rules must use reclaimed water in place of potable water for wash down water and for irrigating the facility grounds. The commission proposes this requirement as a measure to conserve potable water and to be consistent with Chapter 210.

Proposed new §217.39(b) requires that reclaimed water be metered. This requirement is included so that accurate effluent flows for the facility can be determined, since reclaimed water is considered part of the total effluent flow.

Proposed new §217.39(c) requires that water be disinfected before it can be reclaimed for use at the facility. This requirement is included to protect the health of the facility staff and to prevent degradation of any adjacent surface water or groundwater.

Proposed new §217.39(d) authorizes an owner to use water that meets the requirements of either Type I or Type II reclaimed water for any appropriate use. This subsection allows an owner the flexibility to design a reclaimed water system that fits the needs of a particular treatment facility.

Proposed new §217.39(e) reiterates that no further authorization is necessary to use reclaimed water at a treatment facility, provided the requirements in this section are met.

SUBCHAPTER C. CONVENTIONAL COLLECTION SYSTEMS

Subchapter C expands and updates the design requirements for collection systems. This subchapter also adds flexibility, while protecting human health and environment. Alternative collection systems have been separated from convention collection systems and given their own subchapter.

Proposed new §217.51, Applicability, states that this subchapter covers the design, construction, and testing standards for conventional gravity wastewater collection systems, conventional wastewater lift stations, force mains, and reclaimed water conveyance systems.

Proposed new §217.52, Edwards Aquifer, notifies the regulated community that all wastewater collection systems located over the recharge zone of the Edwards Aquifer must be designed and installed following the requirements of Chapter 213, Edwards Aquifer, in addition to the requirements in these rules.

Proposed new §217.53, Pipe Design, establishes the requirements for all collection system designs, including but not limited to flow design and pipe material. This section specifies requirements for separation distances between wastewater pipes and drinking water pipes, laterals and traps, odor and corrosion control, and structural analysis of flexible and rigid pipe.

Proposed new §217.53(a) specifies the flow design basis for collection systems and the required calculations. This subsection formalizes the existing staff review procedures by specifying the computations involved in determining the flow design basis for collection systems.

Proposed new §217.53(b) specifies that the report must identify the proposed collection system pipes with their appropriate standard numbers for both quality control and installation. This subsection also specifies that quality control includes dimensions and tolerances and that installation includes bedding and backfill. This subsection also lists the considerations for choosing collection system pipes.

Proposed new §217.53(c) lists the requirements for pipe joints. The technical specifications must include the materials and

methods used in making joints. The subsection also requires that the technical specifications include an appropriate national reference standard for the joints. This requirement ensures that the executive director has sufficient information to review the joint construction.

Proposed new §217.53(d) requires that the wastewater pipes and manholes maintain certain separation distances from potable water pipes to protect potable water from cross contamination from wastewater.

Proposed new §217.53(e) requires that laterals and taps on a new collection system include manufactured fittings that limit infiltration, prevent protruding service pipes, and protect the mechanical and structural integrity of the collection system. This requirement ensures the mechanical and structural integrity of the collection system. An unprotected pipe may have a higher incidence of infiltration, which could lead to sanitary sewer overflows or hydraulic overload of the treatment facility.

Proposed new §217.53(f) requires that the spacing of supports for carrier pipe through casings ensure and maintain grade, slope, and structural integrity as required by §217.53(k) and (l). This requirement ensures that the carrier pipe has the same slope as the collection system pipe.

Proposed new §217.53(g) specifies that if a pipe deteriorates when subjected to corrosive internal conditions, the collection system must incorporate a corrosion-resistant liner installed by the pipe manufacturer, unless the report demonstrates that the design and operational characteristics of the facility will maintain the structural integrity for at least 50 years.

Proposed new §217.53(h) contains requirements for odor control. If wastewater does not always flow at a constant rate through the pipes, there is a potential for odors. This requirement ensures that potential odors are controlled throughout the life of the collection system.

Proposed new §217.53(i) contains the requirements for laying a collection system near active geologic faults. This subsection requires an owner to locate any active faults within the area of the collection system and minimize the number of pipes crossing faults. The requirement states that the design must use joints that provide maximum deflection and manholes on both sides of a fault so that a portable pump may be used in the event of a collection system failure. Section 217.53(i)(2) states that no collection system service connection may be installed within 50 feet of an active fault. In Chapter 317, both of these provisions were optional. The executive director determined that these requirements are needed to ensure the protection of human health and the environment.

Proposed new §217.53(j) requires that a collection system have the capacity for the service area during the expected life of the system. For example, if there are 100 houses currently in the subdivision with another 100 to be added during the next 10 years, the collection system must be designed to handle 200 houses. The subsection lists the considerations necessary to successfully size a collection system. The considerations are population; institutional, industrial, and commercial flows; peak flows; surcharges; minimum pipe diameters; and storm water drains. The prohibition against allowing storm water in a wastewater collection system is added to be consistent with §281.25 and 40 Code of Federal Regulations (CFR) §122.26.

Proposed new §217.53(k) states the structural analysis requirements for collection systems. Their design must provide a minimum structural life expectancy of 50 years. The subsection also requires an owner to provide inspection during the construction and testing phases of the project. This subsection includes definitions and design analysis requirements for both flexible and rigid pipes.

Proposed new §217.53(l) states the requirements for minimum and maximum slopes to ensure that gravity collection systems flow correctly.

Proposed new §217.53(m) states the alignment requirements for collection systems. The commission proposes to prohibit variances from uniform grade, grade breaks, and vertical curves, without manholes with open cut construction and prohibit construction methods that use flexure of a pipe joint. The prohibitions are necessary to protect human health and environment.

The rule authorizes horizontal pipe curvature if supporting calculations are included in the report and the plans. The executive director receives frequent requests for this type of variance. The rule allows this type of construction with proper safeguards, because it is not always possible to construct straight pipes due to topographic features. The rule sets 300 feet as the maximum allowable manhole spacing for sewers with horizontal curvature and requires that a manhole must be at the point of curvature and point of termination of each curve. These manhole spacing requirements are consistent with §217.55(a)(1).

Proposed new §217.53(n) enumerates the requirements for inverted siphons and sag pipes, including sizing, cleaning, velocity, odors, and testing.

Proposed new §217.53(o) contains requirements for bridged sections. These requirements give the regulated community criteria to design bridged pipelines and allow the executive director to perform consistent reviews of bridged sections.

Proposed new §217.54, Criteria for Laying Pipe, establishes the requirements for pipe embedment material, embedment compaction, envelope size, and excavated trench width. Proper pipe construction is necessary for proper operation and life expectancy of a collection system. This provision will protect human health and the environment.

Proposed new §217.55, Manholes and Related Structures, explains manhole placement, size, structure, types, spacing, and the size increase of a manhole opening. This section requires that manholes be placed at all points of change in alignment, grade, or size of the collection system and lists specific design requirements for manholes. The rule specifies spacing for straight alignment and uniform grade, with modifications in areas subject to flooding. The inside diameter of manhole openings is specified, as well as size of manhole covers and design requirements for manholes in the 100-year floodplain. This section also provides the design specifications for manhole inverts, connections, vents, and cleanouts.

In proposed new §217.55(k) the rule changes the minimum clear opening from 24 inches required in Chapter 317 to 30 inches in diameter for a manhole where personnel entry is anticipated. This diameter requirement will ease the entry of personnel and equipment and provide additional safety when necessary for sewer maintenance and repairs. Additionally, the rule specifies that the opening must be free of any obstructions.

Proposed new §217.55(l)(1)(D) requires that a manhole cover located in a public or private roadway meet the American Association of State Highways and Transportation Officials (AASHTO) standard M-306 in relation to load bearing. The commission

proposes this new standard to ensure that manhole covers are strong enough to support vehicle traffic. This standard protects vehicles and the integrity of the manholes.

Proposed new §217.55(m) prohibits steps in a manhole. The environment inside a manhole may be corrosive and cause the steps to deteriorate.

Proposed new §217.55(n) contains the requirements for connections made within and to a manhole.

Proposed new §217.55(o) requires vents be located above the 100-year flood elevation to prevent flooding, and that tunnel venting requirements are consistent with manhole venting requirements.

Proposed new §217.55(p) requires that cleanouts are equal in size to the collection main to allow the cleaning equipment to fit into the cleanouts.

Proposed new §217.56, Trenchless Pipe Installation, describes the trenchless technologies that may be approved through the standard approval process. Trenchless methods other than those listed in this section are subject to the nonconforming technology approval process.

Proposed new §217.57, Testing Requirements for Installed Gravity Collection System Pipes, requires that the design specify an infiltration, exfiltration, or low-pressure air test and that test results are submitted to the executive director upon request. This section also contains the testing requirements. The section requires that a pipe be retested following any remediation action to clarify that a test must ensure that the remediation action was successful.

Proposed new §217.58, Testing Requirements for Manholes, requires that all manholes must pass a leak test and outlines the requirements for leak-testing a manhole. The commission modified these requirements from Chapter 317 by requiring the test to be run after assembly and backfilling the manholes. These requirements conform to the wastewater industry standards for manhole testing and allow an owner to select an appropriate testing method.

Proposed new §217.59, Lift Station Site Requirements, establishes the criteria for lift station sites. They ensure accessibility by authorized personnel only, protection from 100-year flood events, and minimization of odors.

Proposed new §217.60, Lift Station, Wet Well, and Dry Well Designs, establishes criteria for pump controls, flood protection, wet wells, lift station ventilation (including passive ventilation for wet wells and mechanical ventilation in lift stations), wet well slope, hoisting equipment, dry well/vault valve drains, and dry well sump pumps. These requirements ensure proper operations, prevent sanitary sewer overflows, and protect the safety of the surrounding community.

Proposed new §217.61, Lift Station Pumps, establishes general requirements for the pumps that may be used in lift stations. This section incorporates current engineering practices.

Proposed new §217.61(a) requires that all raw wastewater pumps must be capable of passing a sphere equal to or greater than 2.5 inches in diameter.

Proposed new §217.61(b) states that pump design must accommodate easy removal of the rotation elements.

Proposed new §217.61(c), (d), and (e) add requirements to ensure that a lift station does not pump more water into a treatment facility than it can process, unless flow splitting or equalization is provided.

Proposed new §217.61(f) specifies how a self-priming pump must be designed for a collection system.

Proposed new §217.61(g) specifies the provisions for vacuum priming pumps that allow flexibility in selecting pumps for lift stations.

Proposed new §217.61(h) specifies the requirements for vertical positioning of pumps. Because the commission added vacuum-primed pumps in §217.61(g), the rule includes them as exempted pumps for consistency with the requirements for self-priming pumps.

Proposed new §217.61(i) states that a grinder pump that is privately owned, maintained, and operated and serves only one structure is not subject to this chapter because it is considered part of the plumbing of the structure and not part of the collection system.

Proposed new §217.61(j) sets the standards for a pump for a low-flow lift station so that odors do not collect.

Proposed new §217.62, Lift Station Pipes, establishes requirements for pump suctions, valves, and pipes that must be used in the design of lift stations. The rule allows flexibility in the design of lift station piping.

Proposed new §217.63, Emergency Provisions for Lift Stations, establishes provisions for handling a lift station failure. This section incorporates current engineering practices and requires lift station designs to prevent water pollution in the event of an overflow or discharge of raw wastewater.

Proposed new §217.63(e) prohibits the use of spill containment structures to provide service reliability, but authorizes a spill containment structure if service reliability is provided by another approved method.

Proposed new §217.64, Materials for Force Main Pipes, establishes the requirements for materials used for force main pipe. The rule requires that the force main pipes material must withstand the pressure generated by instantaneous pump stoppage due to power failure under maximum pumping conditions.

Proposed new §217.65, Force Main Pipe Joints, incorporates current engineering practices for joints of force mains in buried service. This section requires that joints have either push-on rubber gaskets or be mechanical joints with a pressure rating equal to or greater than the pipe material. Additionally, this section requires that exposed joints be flanged or flexible and adequately secured to prevent movement due to surges. National reference standards for the joints must be included in the project specifications. These requirements specify force main pipe joint requirements for the regulated community.

Proposed new §217.66, Identification of Force Main Pipes, requires a detector metal tape in the same trench above and parallel to the force main. The words "pressurized wastewater" must be repeated continuously on the tape in letters at least 1.5 inch high. The commission proposes this requirement to ensure that the pipe can be located by conventional equipment and by sight.

Proposed new §217.67, Force Main Design, specifies the requirements for velocities, detention time, water hammer from surges, gravity main connections, pipe separation distances, odor control, and air release valves in force main design to reflect current engineering practices and standards.

Proposed new §217.68, Force Main Testing, explains the required pressure testing procedures for force mains. To simplify the calculation for the minimum test pressure, the design pressure was set at 50 pounds per square inch (psi) above the normal operating pressure of the force main.

Proposed new §217.69, Reclaimed Water Facilities, states the requirements for the design of distribution systems that will convey reclaimed water to a user. These requirements are written for consistency with Chapter 210, Use of Reclaimed Water.

Proposed new §217.70, Storage Tanks for Reclaimed Water, is the design requirements for both elevated and ground-level storage tanks. These requirements are written for consistency with the storage requirements in Chapter 210, Use of Reclaimed Water, and Chapter 331, Underground Injection Control.

SUBCHAPTER D. ALTERNATIVE COLLECTION SYSTEMS

Subchapter D expands the requirements for alternative collection systems so that more of these systems can be given a standard review and approval. Under Chapter 317, many of these systems required review and approval under the variance, nonconforming, or innovative technology sections. These rules expand the criteria to provide the owner of an alternative collection system more options for design, management, and oversight of the system.

Proposed new §217.91, Edwards Aquifer, notifies the regulated community that the design of alternative collection systems must comply with Chapter 213, Edwards Aquifer, in addition to the requirements in this chapter.

Proposed new §217.92, Component Sizing, uses current engineering practices to establish that component size must be based on existing flow data from similar systems and service areas whenever such data is available. It contains the formulas for sizing components if there is no comparable data. This section also prohibits roof, street, or other types of drains that permit entrance of storm water runoff into the wastewater collection system because combined collection systems are prohibited by §281.25 and 40 CFR §122.26.

Proposed new §217.93, General Requirements, subsection (a) states that, except where specifically stated in this subchapter, designs for alternative wastewater collection systems must comply with the applicable requirements of Subchapter C, in addition to the requirements of Subchapter D.

Proposed new §217.93(b) requires the owner to prepare a manual that specifies the operating procedures and maintenance practices for each alternative wastewater collection system.

Proposed new §217.93(c) ensures compliance with subsection (b).

Proposed new §217.94, Management, states the requirements for management of an alternative collection system by making them specific. This provision will allow the owner of an alternative collection system to know more precisely what is required for managing these types of systems.

Proposed new §217.94(a) requires that an alternative wastewater collection system discharge to wastewater facility permitted by the commission.

Proposed new §217.94(b) authorizes the owner of an alternative wastewater collection system to operate the system or to contract for management and operation services with a public or private service provider. The owner may terminate the contract if the provider's services are in conflict with the contract requirements, the wastewater permit, the requirements of this chapter, or other commission rules. These requirements provide owner flexibility in the management of an alternative collection system.

Proposed new §217.94(c) exempts grinder pumps and septic tank effluent pumps discharging directly into a conventional wastewater collection system because these items are considered part of a service lateral pipe and not part of the alternative collection system.

Proposed new §217.95, Service Agreements, specifies the requirements for alternative collection system service agreements and establishes that a service agreement must be executed between the system owner and the service provider. These requirements eliminate inconsistencies regarding how the rule is interpreted. In the past, the executive director has received questions and reviewed submissions regarding the interpretation of these provisions on a case-by-case basis.

Proposed new §217.96, Small Diameter Effluent Sewers, establishes the criteria for the components of a small diameter effluent sewers (SDES), including interceptor tank design, pre-treatment units, tank monitoring, service pipe design, and collection system design, including hydraulic design and vertical alignment.

Proposed new §217.96(a) contains the requirements for interceptor tank design. These requirements were added to ensure consistency with Chapter 285, On-Site Sewage Facilities.

Proposed new §217.96(b) adds requirements for pretreatment units to prevent fats, oils, grease, and sludge from entering the collection system.

Proposed new §217.96(c) contains requirements to ensure that service pipe design conforms to standard engineering practices.

Proposed new §217.96(d) contains requirements for an acceptable SDES design, including hydraulic and vertical design, and to ensure that the executive director can determine compliance with these requirements.

Proposed new §217.97, Pressure Sewers, contains requirements that establish the design criteria for pressure sewers, including pumps service pipes, on-site mechanical equipment, discharge pipes and the collection system. These requirements are included because of questions from the regulated community regarding pressure sewer requirements. These requirements conform to standard engineering practices.

Proposed new §217.98, Vacuum Sewer Systems, brings the provisions for vacuum sewer systems up-to-date with current technology and industry standards. The requirements in this section clarify that a vacuum sewer system is nonconforming technology and may be reviewed by the executive director in accordance with §217.7(b)(2). Historically, the design criteria rules have not contained specific provisions regarding vacuum sewers and the staff has answered questions on a case-by-case basis or reviewed requests for variances for vacuum sewers. These requirements standardize the requirements for vacuum sewers and eliminate the need for many variances.

Proposed new §217.99, Testing Requirements, requires testing all components of an alternative collection system for leaks. These provisions set the minimum testing requirements that conform to standard engineering practices.

Proposed new §217.100, Termination, requires that an alternative collection system terminate at a treatment facility or into a conventional collection system. It also outlines the parameters

of the connection between an alternative collection system and a treatment facility or conventional collection system.

SUBCHAPTER E. PRELIMINARY TREATMENT UNITS

Subchapter E creates a separate place for the requirements relating to the first units in a treatment facility. Chapter 317 combined all treatment facility design requirements into one section. This subchapter allows for better, clearer organization and explanation of the requirements for these units.

Proposed new §217.121, Coarse Screening Devices, specifies that all wastewater treatment facilities must use a coarse screening device, unless otherwise provided in this chapter. This section also incorporates new safety and design requirements for coarse screening devices, including location, screen openings, hydraulics, and corrosion resistance of screens and related structure. These requirements protect the process units in the facility because coarse screening devices prevent large debris from entering the treatment units.

Proposed new §217.122, Fine Screening Devices, provides a definition for a fine screen that conforms to industry standards and explains that, although not required, fine screens may be used in lieu of coarse screens, because of improved technology. This section also provides the circumstances under which it is acceptable to use a fine screen in lieu of a primary sedimentation unit. These requirements incorporate improved technology and ensure consistency with new design parameters.

Proposed new §217.123, Screenings and Debris Handling, specifies that all screenings and debris collected must be managed and disposed of in accordance with 30 TAC Chapter 330, Municipal Solid Waste.

Proposed new §217.124, Grit Removal Systems, requires that all treatment facilities using anaerobic digesters must have grit removal systems, because grit can damage anaerobic digesters. Grit removal must occur prior to an anaerobic digester to ensure that as little inert material as possible enters the anaerobic digester. The rule also defines what constitutes grit removal and makes grit removal optional for other facilities.

Proposed new §217.125, Grit Chambers, updates the Chapter 317 requirements and adds new requirements for horizontal flow grit chambers, aerated grit chambers, mechanical grit chambers, cyclonic degritters, and vortex chambers. These requirements are based on manufacturer's recommendations and standard engineering practices.

Proposed new §217.126, Grit Handling, explains the requirements for grit washing, storage, and disposal.

Proposed new §217.127, Pre-Aeration Units, authorizes pre-aeration to be used for odor control, flocculation of solids, reducing septicity, grease separation, and promoting uniform distribution of solids to clarifiers. It also requires the report to include the basis for pre-aeration system designs. These requirements clarify when a facility requires a pre-aeration unit.

Proposed new §217.128, Flow Equalization Basins, explains design requirements for determining when a flow equalization basin must be used, and the mixing, aeration, volume and pumped flow requirements of equalization basins. These requirements ensure that facilities can handle periodic high flows.

Proposed new §217.129, Primary Clarifiers, establishes the design criteria for primary clarifiers, including the requirements for inlets, scum removal, effluent weirs, basin sizing, including the maximum surface loading at peak flow, maximum surface loading at design flow, minimum effective detention time at peak flow, and minimum effective detention time at design flow. The requirements for final clarifiers are in Subchapter F for better organization of the requirements. This section also includes the requirements for sidewater depth, freeboard, drains, accessibility, 5-day biochemical oxygen demand (BOD_5) removal, sludge pumping, and sludge pipes.

SUBCHAPTER F. ACTIVATED SLUDGE SYSTEMS

Subchapter F explains the requirements for activated sludge systems, which comprise the majority of treatment facilities. Rule provisions are included to address new technologies, such as sequencing batch reactors and membrane bioreactor systems and other rule provisions are included to allow for flexibility in design methods, such as the volume flux method.

Proposed new §217.151, Requirements for an Aeration Basin, provides the requirements for minimum dissolved oxygen concentration in aeration basins and alternate aeration basin volumes. The requirements ensure that the contents of the basin are thoroughly mixed, allow flexibility in the design of aeration basins, and prohibit the use of contact stabilization for nitrification. These requirements meet current engineering standards for aeration basins.

Proposed new §217.152, Requirements for Clarifiers, provides the requirements for activated sludge clarifier components such as inlets, scum removal, effluent weirs, sludge pipes, sludge collection equipment, pumped inflow, side water depth, and redundancy. This section also provides restrictions on hopper bottom clarifiers, prohibits designs that allow short-circuiting of influent or effluent weirs, and specifies the calculations that are required to determine return sludge pumping capacity. Additionally, the language notes that the sludge digester or disposal methods must comply with 30 TAC Chapter 312, Sludge Use, Transportation, and Disposal.

Proposed new §217.153, Requirements for Both Aeration Basins and Clarifiers, lists the requirements related to construction material, freeboard, redundancy, and flow control that are common to both aeration basins and clarifiers.

Proposed new §217.154, Aeration Basin and Clarifier Sizing--Traditional Design, subsection (a) provides the standard design values to be used to size aeration basins and clarifiers when using the traditional design approach.

Proposed new §217.154(b) contains the requirements for aeration basin sizing. The size of an aeration basin must be based on the organic loading of the influent and the permitted effluent limits. The aeration basin volume must be calculated to ensure that the organic loading on the aeration basins does not exceed a rate that might cause a violation of permitted effluent limits. This requirement also authorizes loading rates to vary from the requirements of this section, if justified in the report.

Proposed new §217.154(c) contains the requirements for clarifier sizing. It establishes the maximum surface loading rates and the minimum detention times used to determine the size of an activated sludge clarifier.

Proposed new §217.155, Aeration Equipment Sizing, updates, explains, and adds flexibility to the methods for achieving the proper oxygenation of the wastewater by mechanical or diffused aeration systems. It includes processes formerly considered nonconforming or innovative technologies that have become industry standards. This will streamline the review process and

allow the executive director to grant a standard approval to facilities that would have needed a variance under Chapter 317.

Proposed new §217.156, Sequencing Batch Reactors, explains the design criteria for Sequencing Batch Reactors (SBRs), including the number of basins and tanks, aeration requirements, utilization of duplicate controllers, measures for flow variation, and decanting devices. These requirements allow greater flexibility in SBR design options. Staff has identified a trend of increased use of these designs in Texas. SBRs have a significant appeal for small communities because a properly designed SBR can achieve a high degree of treatment at a reduced cost. In order to ensure protection of human health and environment, the rules codify the standards for SBRs that the executive director currently uses to review these designs.

Proposed new §217.157, Membrane Bioreactor Systems, outlines the requirements for Membrane Bioreactor Systems (MBRs) that were considered innovative technology in Chapter 317. MBRs have gained wide acceptance in the wastewater industry. Including standards for these systems informs the regulated community of the standards the executive director will use to review these systems. It also authorizes the executive director to grant a standard approval for MBRs that meet these requirements instead of reviewing each facility for a variance on a case-by-case basis. Standards for these requirements were based on information gathered from other states' rules and numerous engineers, consultants, and vendors experienced in MBR design and operation.

Proposed new §217.157(a) is the applicability statement. It includes the notice that an MBR that does not meet the requirements of this section is innovative technology and is subject to approval under §217.7(b)(2).

Proposed new §217.157(b) contains the acceptable performance standards for MBRs. Any design based on performance standards greater than the ones in this subsection must be justified by supporting data.

Proposed new §217.157(c) contains the design standards for both flat plate and hollow tube MBRs, including parameters for pretreatment, biological treatment, aeration, recycle rates, nutrient removal, use of membranes, membrane design, supporting data, redundancy, other equipment, and disinfection.

Proposed new §217.157(d) contains the standards for operating an MBR including membrane cleaning, operational parameters, and control instrumentation.

Proposed new §217.157(e) outlines the requirements for the use and disposal of chemicals associated with an MBR.

Proposed new §217.157(f) ensures that operators assigned to an MBR are trained and familiar with its operation.

Proposed new §217.157(g) requires an MBR to be covered by a warranty and authorizes the executive director to require a performance bond if there is a question about the MBR's ability to perform to the standards of this chapter.

Proposed new §217.158, Solids Management, specifies the requirements for properly handling sludge within the treatment facility, including recycling, monitoring, wasting, solids blanket, return activated sludge pump design, waste activated sludge pump design, and piping.

Proposed new §217.158(a) requires that the return sludge system operate satisfactorily at all anticipated flow conditions in order to protect human health and environment.

Proposed new §217.158(b) requires adequate equipment to store and/or process the waste activated sludge under all flow conditions. Staff experience has shown that some small facilities did not have adequate sludge wasting equipment, causing unauthorized discharges into waters in the state. This provision prevents this shortcoming to protect human health and the environment.

Proposed new §217.158(c) and (d) contains the sludge pump requirements. This requirement ensures that the facility will be able to pump sludge under all conditions with the largest pump out of service and is consistent with other redundancy requirements in this chapter.

Proposed new §217.158(e) includes the standards for the design of the sludge pipe system that include provisions to address cleaning, flushing, solids settling, and scouring.

Proposed new §217.159, Process Control, provides the criteria for implementing solids retention time (SRT) control and aeration system control.

Proposed new §217.159(a) requires that an activated sludge facility be designed with the necessary equipment for an operator to control the SRT in the aeration tanks by wasting a measured volume of surplus activated sludge regularly. The report and the operating manual must provide the formulas for determining the SRT. This requirement was added because an operator must manage for an activated sludge facility to operate properly.

Proposed new §217.159(b) lists the requirements for aeration control. A facility may be designed to adjust the airflow in proportion to the biological loading of the influent. If this type of control is installed, the aeration equipment must be easily adjustable and must maintain solids in suspension. This requirement allows flexibility in designing aeration controls and conserves energy.

Proposed new §217.160, Operability and Maintenance Requirements, explains the requirements of having equipment that is designed to operate at the temperature extremes of the facility location, being accessible to staff for operation and maintenance, and being housed in facilities with adequate room for removal, repair, and installation. This section was added in response to problems encountered.

Proposed new §217.161, Electrical and Instrumentation Systems, establishes power supply requirements for facility equipment, safety requirements for electrical equipment, and design standards for alarm systems for malfunctioning equipment. These requirements ensure that a facility is monitored and protected from vandalism, natural disasters, power interruptions, and equipment failures.

Proposed new §217.162, Internal Process Flow Measurement, requires facilities with design flows greater than 400,000 gallons per day to include process flow measurement. An operator must be able to determine the return rates and flow rates to properly operate the facility. This requirement addresses this operational need.

Proposed new §217.163, Advanced Nutrient Removal, provides the requirements for including processing units that removed nutrients other than the standard effluent set (total suspended solids, biochemical oxygen demand, ammonia-nitrogen). Chapter 317 considered advanced nutrient removal innovative technology, but technology has improved and advanced nutrient removal is required at many facilities. It authorizes the executive director to grant a standard approval for advanced nutrient removal designs that meet these requirements instead of review-

ing each facility on a case-by-case basis. Standards for these requirements were based on information gathered from other states' rules and numerous engineers and consultants.

Proposed new §217.164, Aeration Basin and Clarifier Sizing--Volume-Flux Design Method, provides an alternative method to determine the size of aeration basins and clarifiers. This requirement was added to allow flexibility in designing a treatment facility and is needed to ensure that the volume-flux design methods are consistent with sound engineer practice. The volume-flux design approach is as protective of human health and the environment as the traditional design method.

SUBCHAPTER G. FIXED FILM AND FILTRATION UNITS

Proposed new §217.181, Applicability, states that this subchapter applies to trickling filters, rotating biological contactors, submerged biological contactors, and filtration systems.

Proposed new §217.182, Trickling Filters--General Requirements, states the general requirements for the use of trickling filters, which are secondary aerobic biological processes used for treatment of wastewater. This section defines biofilters or biotowers as trickling filters that use random or stackable modular synthetic media. This section also provides requirements for determining process applicability and pretreatment requirements.

Proposed new §217.182(a) contains the requirements for process applicability and explains that trickling filters are classified according to applied influent hydraulic and organic loadings.

Proposed new §217.182(b) contains the requirements for trickling filter classification and classifies trickling filters based loading rates. In Chapter 317, trickling filters were distinguished based on their role in treatment. These requirements specify the different types of trickling filters according to their capacity.

Proposed new §217.182(c) contains Table G.1, which contains the hydraulic and organic loadings for different classes of trickling filters. The values in the table update the standards for consistency with current technology.

Proposed new §217.182(d) contain the requirements for pretreatment. All trickling filters must have upstream preliminary treatment units that remove grit, debris, suspended solids, oil, grease, and large particles, as well as control the release of hydrogen sulfide.

Proposed new §217.182(e) contains the requirements for materials and placement of rock filter media. These requirements ensure that the rock media filter material will function properly.

Proposed new §217.182(f) contains the requirements for synthetic (manufactured or prefabricated) media materials. The executive director may consider synthetic media materials to be innovative or nonconforming technology subject to review under §217.7(b)(2). Additionally, the provisions for structural integrity state that the structural design must support the synthetic media, water flowing through or trapped in voids, the maximum anticipated thickness of wetted biofilm. The synthetic media must also support the weight of a person while the trickling filter is in operation, unless separate provisions are made for maintenance access.

Proposed new §217.182(g) contains the requirements for filter dosing and requires that the design include suitable flow characteristics for the application of wastewater to the filters by siphons, pumps, or gravity discharge from preceding treatment units. The commission requires design provisions to control instantaneous dosing rates under both normal operating conditions and filter-flushing conditions. Table G.2 provides design ranges of dosing intensity for normal usage and flushing periods. This requirement is included for consistency with current industry standards and to provide more specific information regarding filter dosing.

Proposed new §217.182(h) includes the requirements for distribution equipment. A trickling filter must include electrically driven, variable speed filter distributors to allow operation at optimum dosing intensity independent of recirculation pumping. This requirement prevents failures from unequal distribution and drying of the media and conforms to standard engineering practices. Additionally, the rule specifies that if existing rectangular trickling filters are retrofitted with rotary distributors, any media that will not be fully wetted must not be considered as part the effective treatment area of the process.

Proposed new §217.182(h)(11) requires that rotary distributors operate at speeds of at least one revolution per 30 minutes to prevent unequal distribution and drying of the media.

Proposed new §217.182(h)(12) requires that trickling filters with a height or diameter that does not allow removal and replacement of distributors by a crane must provide jacking columns and pads at the distributor column. Some trickling filters have been designed without a way to remove the distributors once they are in place. This situation has caused problems when the distributors need to be repaired or replaced and this requirement is included to address the problem.

Proposed new §217.182(i) contains the requirements for recirculation. In paragraph (1), it requires the minimum flow rate be sufficient to keep the rotary distributors turning by requiring designs using hydraulically driven distributors to keep rotary distributors turning at the minimum design rotational velocity. This requirement applies to any facility that treats at least 400,000 gallons per day to remain consistent with the other requirements in this chapter.

Proposed new §217.182(i)(2) contains the requirements to provide recirculation that supplements influent flow if design and flushing dose intensities are not achieved solely by control of distributor operation. Controls for the distributor speed and recycle pumping rate must provide optimum dosing intensity under all anticipated influent flow conditions. This provision is included because recirculation helps to optimize removal efficiencies.

Proposed new §217.182(i)(3) contains the requirements for process calculations. The benefits of recirculation are primarily related to dosing intensity, and may often be achieved by control of the distributor speed only. The report must describe a design that propose recirculation for removal of remaining organic matter in the wastewater, identify the effect of dilution of the influent on the rate of diffusion of dissolved organic substrates into the biofilm, the effect of reduced influent concentrations on reaction rates in sections of the filter having first order kinetics. This requirement is included because it is consistent with current industry standards and provides more specific direction regarding process calculations.

Proposed new §217.182(i)(4) contains the requirement that recirculation rates may not exceed four times design flow, unless the report provides calculations to justify the higher rate. This requirement was added for consistency with industry standards.

Proposed new §217.182(i)(5) states that if influent organic loadings are constant, a facility must use direct recirculation of unsettled trickling filter effluent and that the distributor nozzles handle

the sloughed biofilm. These provisions ensure that distributor nozzles do not become clogged. If influent organic loadings are variable, a facility must recirculate effluent from the final clarifier to either the primary clarifier or to the trickling filter to equalize organic loading. The input point of recirculated influent depends on the content of the influent.

Proposed new §217.182(j) contains the requirements for average hydraulic surface loading. Section 217.182(j)(2) includes "except in roughing applications" to the requirement because roughing applications can exceed the average hydraulic surface loadings of filters with crushed rock, slag, or similar media. Roughing applications by definition are systems that only partially filter the wastewater.

Proposed new §217.182(k) contains the requirements for underdrain system design. The requirement follows the manufacturer's recommendation to ensure that the media will be properly installed and used.

Proposed new §217.182(l) requires the floors of underdrain systems to be sloped. Trickling filters using stackable modular synthetic media must slope toward the drainage channel based upon filter size and hydraulic loading. Staff has identified an increased use of stackable modular synthetic media and the provision set requirements for stackable modular synthetic media in order to protect human health and the environment.

Proposed new §217.182(m) contains the requirements for passive ventilation that are included to conform to standard industry practice and to protect human health and the environment.

Proposed new §217.182(n) contains the requirements for forced ventilation. Equation G.2 and the values in Table G.3 set minimum airflow rates. These requirements provide an option for nitrification. They establish the minimum criteria for forced air ventilation for trickling systems based on standard engineering practices.

Proposed new §217.182(o) contains the requirements for cleaning, sloughing, controlling nuisance organisms, and corrosion control. Proper maintenance is necessary for proper operation of the equipment.

Proposed new §217.182(p) requires that a trickling filter system include a means to measure flows to the filter and recirculation flows.

Proposed new §217.182(q) contains the requirement for odor control. Paragraph (1) requires that a trickling filter system use ventilation capable of controlling odors at design flow and during periodic flushing. The paragraph also states that the executive director may require a facility with a history of odor complaints to cover its trickling filter. Covers trap odors and the scrubbers or adsorption columns remove the odors from the air before it is vented from the system.

Proposed new §217.182(q)(2) requires that a trickling filter with high influent organic loadings have forced ventilation to minimize odors and lists the options for handling odorous off-gases. These requirements are included to allow design options for odor control.

Proposed new §217.182(r) requires that the final clarifiers be sized to handle the additional total suspended solids due to the biomass.

Proposed new §217.182(s) lists elements that must be included in the report related to fixed film and filtration.

Proposed new §217.183, Nitrifying Trickling Filters--Additional Requirements, provides requirements in addition to §217.182 for using trickling filters to provide nitrification sufficient to meet the requirements of a wastewater permit. This section includes requirements for ventilation, temperature, pH, predation, hydraulic application rates, media, tertiary nitrification filter, combined BOD/nitrification filters, and to update the rules to comply with engineering design advances. Currently, many wastewater permits require nitrification based on modeling of the receiving water for a wastewater discharge. This requirement was added to reduce toxicity and maintain the dissolved oxygen level in receiving waters. To assist facilities in meeting the new nitrification requirements, new engineering standards were developed and these provisions are consistent with current industry standards.

Proposed new §217.184, Dual Treatment Using Trickling Filters, explains the requirements and processes for use of trickling filters or other attached growth units in series with suspended growth processes. This section includes classification of dual treatment processes, design criteria for attached and suspended growth processes, and treatment unit design criteria. Each combination option in this section is protective of human health and the environment.

Proposed new §217.184(c)(1) - (4) require that the design of suspended and attached growth systems include all of the features and operational capabilities required for the same treatment units when used for single-process treatment, as well as pretreatment, snail control, return sludge, and aeration. Additionally, an aeration system for a second-stage treatment unit in a facility designed for nitrification must transfer sufficient oxygen for biomass growth; respiration for both carbonaceous material oxidation and nitrification; and oxygen demand due to biomass sloughing events from the first stage.

Proposed new §217.184(c)(5) requires that a second-stage suspended growth process operate in a way that varies the age of the sludge and that a nitrifying dual system control the total combined mean cell residence time. This provision ensures adequate time for nitrification to occur.

Proposed new §217.184(c)(6) requires a minimum hydraulic residence time for consistency with standard engineering practices.

Proposed new §217.184(c)(7) requires nitrification using a dual treatment process including a sludge re-aeration basin if the second process is an aerated solids contact basin or an intermediate clarifier if the second process is an activated sludge aeration basin. This provision is consistent with standard engineering practices.

Proposed new §217.185, Rotating Biological Contactors, provides the requirements and provisions for the use of improved Rotating Biological Contractors (RBC) units, including pretreatment, enclosures and ventilation, media design, design flexibility, tank configuration, control of unwanted growth in the initial stages, downtime maintenance provisions, bearing maintenance, organic loading design requirements, hydraulic loading design requirements, stages of RBC units, drive systems, and dissolved oxygen.

Proposed new §217.185(a) requires pretreatment of wastewater entering an RBC so that the RBC will operate properly and provide the expected treatment results.

Proposed new §217.185(b) requires that the RBC unit be covered and have adequate ventilation, and to include access doors

and observation ports to allow access and a visual inspection of the RBC without having to open the unit.

Proposed new §217.185(c) and (d) contain the required and optional design criteria for RBCs and requires that these items be included in the report.

Proposed new §217.185(e) requires that an RBC tank minimize the zones in which solids will settle out and contains a requirement that an RBC tank must include tank drains to facilitate removal of any accumulated solids. This requirement is included to ensure that the tanks maintain adequate treatment capacity.

Proposed new §217.185(f) authorizes the use of chlorine upstream of an RBC system to control the growth of beggiatoa, which is an unwanted microorganism that may inhibit the initial stage of an RBC system. This requirement was added because chlorine may control the growth of beggiatoa without harming the operation of the RBC.

Proposed new §217.185(g) and (h) contains the provisions for maintenance. An RBC system designed for a facility with a permitted flow of at least 1.0 mgd must have three or more stages in series. A stage must be capable of being taken off-line for maintenance or cleaning. RBC bearings must be easily accessible for inspection and lubrication. These requirements ensure that maintenance can be performed without interrupting operation of the facility.

Proposed new §217.185(i) contains the requirements to base the organic loading for an RBC system on total BOD_5 to adjust the required RBC media area to compensate for the ratio of soluble BOD_5 to total BOD_5, and to set the allowable organic loading for the entire RBC system. In Chapter 317, these requirements were in a table. This provision incorporates them into the proposed rule language to make them more readable.

Proposed new §217.185(j) contains the requirements for an RBC system to include flow equalization when the peak-to-design flow ratio is higher than 2.5 to 1.0 to prevent loss of fixed growth from the media. The first stage of the RBC system must include a means of spreading the influent evenly across the media to ensure that the fixed growth is not scoured. This provision is consistent with industry standards.

Proposed new §217.185(k) contains the requirements for stages. A stage includes one or more RBC unit divided by a vertical baffle or wall. An RBC system designed for BOD_5 removal must have at least three stages in series, unless the report justifies a lesser number.

Proposed new §217.185(l) requires that an RBC drive system handle the maximum anticipated media load and allows a variable speed drive system and the RBC units to be mechanically or air driven.

Proposed new §217.185(m) contains the requirements for dissolved oxygen in an RBC and states that the executive director may require supplemental aeration.

Proposed new §217.186, Nitrifying Rotating Biological Contactors, provides additional requirements for RBCs used for BOD_5 removal and nitrification.

Proposed new §217.186(a) requires that an RBC system designed for BOD_5 removal and nitrification in a single system include four stages. This subsection also sets the maximum overall organic loading rate to be consistent with industry standards.

Proposed new §217.186(b) requires that a nitrifying RBC system include capabilities for chemical addition if the influent pH is below 7.0. This requirement ensures that the pH can be raised to a neutral level if the pH is too acidic. The fixed growth media does not function efficiently if the pH is below 7.

Proposed new §217.186(c) requires that the report justify the nitrification rate of the system to ensure that the executive director can efficiently review the design of the nitrification rate of the system.

Proposed new §217.186(d) states that a nitrifying RBC system may be subject to the requirements of §217.7(b)(2).

Proposed new §217.187, Dual Treatment Systems Utilizing Rotating Biological Contactors, explains the requirements for allowing RBC units to be used in conjunction with other units and to conform to engineering design advances. These combined systems may be subject to the requirements of §217.7(b)(2). This provision allows an owner the flexibility to use RBC units in conjunction with existing treatment units.

Proposed new §217.188, Submerged Biological Contactor, proscribes the process for designing SBCs using criteria similar to RBC criteria except that two air headers are required for each SBC unit and any submerged bearings must be sealed. These changes comply with current engineering standards.

Proposed new §217.188(a) states that an air driven SBC system does not require a cover, since 60% of a unit is submerged and the possibility of the media drying out is low.

Proposed new §217.188(b) requires an SBC system to use the same pretreatment as an RBC and must meet the criteria §217.184 with two exceptions, headers and bearings.

Proposed new §217.189, Dual Treatment Systems Using Submerged Biological Contactor, authorizes an SBC unit to be used in conjunction with other systems. This provision allows an SBC system to be used as a roughing unit in series with activated sludge and to be installed in existing activated sludge basins to create a combination fixed and suspended growth process. The rule requires that the report include supporting data, calculations, process descriptions, and vendor information to describe how the proposed system will provide the required treatment levels; and specifies that these designs may be subject to the requirements of §217.7(b)(2). These provisions allow flexibility to use existing systems when expanding an existing facility and are consistent with standard engineering practices.

Proposed new §217.190, Filtration, states the general requirements for filtration systems such as permit water quality requirements, redundancy, source of backwash water, disposition of backwash water, sequence of treatment units, overload conditions, and control of slime growth.

Proposed new §217.190(a)(1) requires that a treatment facility with tertiary effluent limitations (e.g., total suspended solids effluent limit less than 15 milligrams per liter) use filtration to supplement suspended solids removal.

Proposed new §217.190(a)(2) authorizes a treatment facility with secondary or advanced secondary effluent limitations to use filtration to supplement operation if filters are not necessary to meet permitted effluent limitations. Filtration reduces oxygen-demanding substances by removing the non-soluble fraction of the clarifier effluent and normally provides effective removal for suspended biological floc and residual materials that remain after secondary clarification.

Proposed new §217.190(b) requires that a treatment facility using filtration to provide tertiary treatment for have a minimum of two filter units, and must provide adequate filtration with the largest filter unit out of service. If a filter is not required to meet permit requirements, only one filter is required. This may save the owner of the facility the expense of installing two filters.

Proposed new §217.190(c) requires a filtration system to use filtered effluent as the source of backwash water to ensure that the backwash sufficiently cleans the filter.

Proposed new §217.190(d) requires that a filtration system to return backwash water containing material cleaned from the filter to the head of the treatment facility for processing. Chapter 317 required that the wastewater be returned to an upstream treatment unit. This provision defines "upstream treatment unit."

Proposed new §217.190(e) requires that a final clarifier designed in accordance with Subchapter F precede a filter unit. A filter system may be used in conjunction with disinfection tanks to provide additional detention time. These provisions will allow by rule a practice that the executive director has allowed by variance. This process is protective of human health and the environment.

Proposed new §217.190(f) requires a facility design include a method to prevent effluent from overflowing from the wastewater treatment units. If not properly designed, during peak flows or excessive carryover of suspended solids from the final clarifier for an extended period of time, the filter units may overload and overflow.

Proposed new §217.190(g) requires that a filtration system provide periodic disinfection of the filters to control slime growth in the filter and backwash storage tank.

Proposed new §217.191, Additional Requirements for Deep Bed, Intermittently Backwashed, Granular Media Filters, includes the design criteria required in addition to the requirements in §217.190 for deep bed, intermittently backwashed, granular media filters, including application rates, media design, backwash system, underdrain system, tank design and controls.

Proposed new §217.191(a) sets application rates for single, dual, and mixed media filters. This subsection also requires that filters be able to treat the peak flow with one filter out of service.

Proposed new §217.191(b) contains the requirements for media design, including uniformity coefficient, particle size, depth of media, and underdrain systems.

Proposed new §217.191(c) contains the requirements for backwash systems. Backwash systems are critical to the operation of filters. These requirements ensure that the backwash systems function properly and adequately clean the filters.

Proposed new §217.191(d) requires that the underdrain system provide a uniform distribution for filter backwash without excessive head loss or plugging.

Proposed new §217.191(f) lists the requirement regarding tank design in relation to backwashing filters. These requirements are in place to ensure that filter media is not lost during backwashing.

Proposed new §217.191(g) sets the requirements for the backwash system control mechanism. These requirements ensure that the controls are adequate to allow proper monitoring and operation of the backwash process.

Proposed new §217.192, Additional Design Requirements for Multi-Compartmented, Low Head, Automatically Backwashed Filters, updates and explains that in addition to meeting the requirements in §217.191, additional design criteria for multi-compartmented, low head, automatic backwash filters including application rates, media design, backwash system, and traveling bridge apply.

Proposed new §217.192(a) sets the application rate for single, dual, and multi media filters. This option allows short-term overloading of the unit because it will not impair its function.

Proposed new §217.192(b) specifies media sizes and depths consistent with standard engineering practices.

Proposed new §217.192(c) contains the requirements for automatic backwash systems. This requirement changes the Chapter 317 requirement of 10 gallons per minute to 20 gallons per minute to reduce the backwash duration. The provision reduces the requirement of "30 to 60 seconds" in the Chapter 317 rules to "at least 20 seconds" to correspond to the increased gallons per minute. This change allows the filters to return to service more quickly.

Proposed new §217.192(d) provides that a traveling bridge that provides support and access to the backwash pumps and equipment must be constructed of corrosion-resistant materials, have adequate bridge tracking, safe support of the power cords, and automatic initiation of the backwash cycle. The requirement responds to questions from the regulated community regarding what is required for a traveling bridge and is consistent with current industry standards.

Proposed new §217.192(e) provides for automatic and regular removal of any floating material. Floating materials that are too large to pass through the filter system must be returned to the head of the facility to pass through a bar screen. This requirement ensures that floating material is properly processed.

Proposed new §217.193, Alternative Designs for Effluent Polishing, explains that the use of other processes for tertiary suspended solids removal, such as microscreens or countercurrent, continuous filtrate and backwash flow filters, will subject to the nonconforming technology requirements of §217.7(b)(2).

SUBCHAPTER H. NATURAL TREATMENT FACILITIES

Subchapter H addresses natural treatment systems separately from mechanical treatment facilities. This separation lets the commission address the different criteria and requirements needed to construct and operate treatment lagoons.

Proposed new §217.201, Applicability, states that this subchapter applies to Imhoff tanks, constructed wetlands, facultative lagoons, aerated and partially aerated lagoons, stabilization lagoons, treated effluent storage lagoons, evaporative lagoon systems, and overland flow processes.

Proposed new §217.202, Primary and Secondary Treatment Units, is the requirements for primary and secondary treatment units in natural treatment systems.

Proposed new §217.203, Design Criteria for Natural Treatment Facilities, updates and groups the requirements that apply to one or more of the natural treatment facilities or units. Natural treatment include flow distribution, windbreaks and screening, maximum liner permeability, embankment design and construction, disinfection, sampling point significance, and storm water drainage. These criteria provide more flexibility by allowing options that combine treatment methods. These options allow better use of the surrounding land features and better long range planning.

Proposed new §217.203(a) requires the shape and size of these treatment facilities to ensure even distribution of the wastewater.

Proposed new §217.203(b) requires that all natural treatment units include windbreaks if spray irrigation is used in a location where drift presents a risk of contact with the general public and allows the use of vegetative screening. The use, the type, and the extent of windbreaks or vegetative screening are subject to approval by the executive director.

Proposed new §217.203(c) contains the requirements for maximum liner permeability. These rules provide greater flexibility than the Chapter 317 rules and may allow a cost savings for the owner of the facility. Section 217.208 and §217.209 establish liner and permeability requirements for evaporative lagoon facilities or overland flow facilities systems.

Proposed new §217.203(d) contains the requirements for testing and compliance with the liner permeability requirements and requires that the report include the results of any tests required in this subsection. This testing protocol is consistent with the commission's current permit requirements and is more cost effective. This subsection establishes protocols to eliminate the need for a variance for using amended in-situ soils because amended in-situ soil protocol is as protective as using in-situ soils. The provision also requires a synthetic liner to have a thickness of 40 millimeters to protect groundwater from contamination.

Proposed new §217.203(e) contains the requirements for embankment design and construction. It will allow access for vehicles and maintenance equipment. It also prohibits steep embankments because these slopes have a greater potential to fail and make it difficult to maintain a vegetative cover. All embankments must be protected against erosion by planting grass, paving, riprapping, or other approved methods.

Proposed new §217.203(f) specifies that chemical or ultraviolet disinfection is not required if a detention time of at least 21 days is provided in a entire, free-water surface, natural treatment unit. This requirement is consistent with 30 TAC Chapter 309.

Proposed new §217.203(g) requires that holding time in a storage lagoon cannot be used to meet the permit 21-day detention time requirement for disinfection. Treated effluent storage lagoons may be used for municipal permit storage requirements or for reclaimed water projects and must comply with other requirements of Chapter 210.

Proposed new §217.203(h) requires that a natural treatment facility prevent storm water drainage into the treatment units.

Proposed new §217.204, Imhoff Tanks, provides updated design criteria for constructing Imhoff tanks that address settling compartments, surface loading, scum baffles, gas vents, digestion compartment loading, Imhoff tank dimensions, sludge removal, odor management, treatment efficiency, material, and construction. The design criteria regulating Imhoff tanks were repealed by the commission in 1990. These requirements are standard engineering designs for Imhoff tanks and are consistent with other commission rules.

Proposed new §217.205, Facultative Lagoons, provides the design criteria for facultative lagoons, including configuration of inlets and outlets, depth, organic loading, odor control, and removal efficiency. This provision allows flexibility in the design of lagoons protecting human health and the environment.

Proposed new §217.206, Aerated Lagoons, provides updated requirements for completely and partially mixed aerated lagoons. The requirements address redundancy, piping, monitoring, location temperature, sizing, and scouring. The requirements offer flexibility as well as protection of human health and the environment.

Proposed new §217.207, Stabilization Lagoons, requires lagoons that are designed as secondary units to treat suspended and dissolved organic matter in wastewater. It addresses primary treatment, odor management, the number of lagoons, dimensions of the lagoons, water level considerations, hydraulic and pipe considerations, maximum organic loading, and inlet and outlet structures.

Proposed new §217.207(a) requires primary treatment to remove the settleable and floatable solids in the influent wastewater prior to the stabilization lagoons, which treat suspended and dissolved organic matter in wastewater.

Proposed new §217.207(b) requires an owner to include measures to manage odors from stabilization lagoons.

Proposed new §217.207(b)(1) requires that a stabilization lagoon be located so that prevailing winds will be toward less populated areas to minimize nuisance odors.

Proposed new §217.207(b)(2) requires that the lagoons must be pre-filled to the two-foot level at start-up, if uncontaminated water is available. This requirement is included to encourage the rapid start-up of the biological process and to discourage odor.

Proposed new §217.207(b)(3) requires that a lagoon system must include a pipe arrangement that allows the recirculation of effluent. Surface spray may be used to assist in maintaining aerobic conditions at the lagoon surface and reduce potential odors. These requirements are included because recirculation provides active algal cells to the upstream feed area, which provides photosynthetic oxygen for organic digestion. Recirculation also provides a more completely-mixed environment within the lagoon system.

Proposed new §217.207(c) requires that a facility must have at least two stabilization lagoons if they are used to meet effluent limits. The stabilization lagoons must be in series with each other following the primary treatment unit.

Proposed new §217.207(d) contains the design requirements for stabilization lagoons.

Proposed new §217.207(d)(1) requires a minimum length-to-width ratio of a stabilization lagoon to ensure that the wastewater is properly treated.

Proposed new §217.207(d)(2) avoids dead zones and ensures proper treatment by prohibiting islands, peninsulas, or coves within the lagoon boundaries.

Proposed new §217.207(d)(3), specifies the normal water depth for stabilization lagoons to ensure the proper stratification of water treatment.

Proposed new §217.207(d)(4) specifies that inlet and outlet structures must allow for adjusting water levels to assist in controlling weeds and other vegetative growth to ensure proper operation and maintenance of the facility.

Proposed new §217.207(d)(5) requires that a stabilization lagoon have a 2.0 foot minimum freeboard if less than 20 acres and a 3.0 foot minimum freeboard if 20 acres or more. The potential for white-capping on a larger lagoon surface may encourage erosion. A deeper freeboard compensates for the erosion potential in lagoons with larger surface areas.

Proposed new §217.207(e) contains the requirements for hydraulic and pipe considerations. These requirements are included to ensure that an operator has flexibility to manage the lagoons properly in normal and worst-case conditions.

Proposed new §217.207(f) contains the requirements for the maximum surface organic loading rate for stabilization lagoons. The provision is included to specify that the loading rates are based on the BOD_5 influent load after the preliminary treatment units.

Proposed new §217.207(g) contains the requirements for inlet and outlet structures.

Proposed new §217.207(g)(1) requires that an outlet must include removable baffles to prevent floating material from being discharged and be constructed to operate varying surface levels under normal operating conditions.

Proposed new §217.207(g)(2) specifies that the discharge must be submerged. If a lagoon does not have submerged outlets, the lagoons may have a discharge that contains algae and high fecal coliform.

Proposed new §217.207(g)(3) specifies that multipurpose control structures may be used to facilitate normal operational functions to and allow the operator to properly operate and maintain the facility.

Proposed new §217.207(g)(4) specifies that all pipe embankment penetrations must have seep water-stop collars to prevent wastewater from leaking through or eroding an embankment.

Proposed new §217.207(g)(5) specifies that a stabilization lagoon must have a drainage system to allow scheduled maintenance or emergency repair on the lagoon.

Proposed new §217.208, Evaporative Lagoons, establishes the requirements for evaporative lagoons, including size and number, odor management, liners, and configuration of depth and loading, embankment, and inlet and outlet structures of the lagoon. These requirements are included in response to questions from the regulated community regarding minimum design criteria for evaporative lagoons.

Proposed new §217.208(a) is the minimum design criteria necessary for using evaporative lagoons in a treatment facility.

Proposed new §217.208(a)(1) requires that an evaporative lagoon process must have a minimum of two lagoons. Redundancy is necessary to keep the treatment process operating during repairs and maintenance.

Proposed new §217.207(a)(2) specifies that the primary evaporative lagoon must provide at least 60% of the total surface area. These provisions are consistent with standard engineering practices.

Proposed new §217.208(a)(3) requires the minimum number and size of evaporative lagoons provide adequate evaporation of the design flow during periods of low evaporation. During low evaporation or wet weather periods, secondary lagoons may be required to provide adequate evaporative surface area to accommodate influent flows and precipitation.

Proposed new §217.208(b) specifies that evaporative lagoons be located so that the local prevailing winds will be toward less populated areas to minimize nuisance odors.

Proposed new §217.208(c) contains the requirements for evaporative lagoon liners.

Proposed new §217.208(c)(1) requires that evaporative lagoons be constructed with synthetic membrane liners with a minimum thickness of 40 millimeters. The provision requires synthetic membrane liners because they are less likely to crack than clay liners.

Proposed new §217.208(c)(2) requires that the liners have an underdrain leak detection system consisting of at least a leachate collection and a detection system to ensure that the liner is intact and groundwater is not threatened.

Proposed new §217.208(c)(3) specifies that the liner construction requires proper compaction of soils beneath the liner so that the liner is not compromised by settling or shifting.

Proposed new §217.208(c)(4) specifies that the liner material must be capable of receiving constant sunlight without degrading to lengthen the functional life expectancy of the liner.

Proposed new §217.208(d) contains the requirements for configuration, depth, and loading.

Proposed new §217.208(d)(1) authorizes an evaporative lagoon to be constructed in round, square or rectangular style shapes to ensure that an evaporative lagoon can be designed to fit the topography of the location.

Proposed new §217.208(d)(2) specifies that the depth of an evaporative lagoon is dependent on its location within the lagoon system. These requirements are included for consistency with standard engineering practices.

Proposed new §217.208(d)(3) contains the evaporation and organic loading requirements.

Proposed new §217.208(e) specifies that the owner must construct embankments for evaporative lagoons in accordance with §217.203(e). This requirement is included to maintain consistency throughout the design criteria rules.

Proposed new §217.208(f) contains the requirements for inlet and outlet structures to be consistent with standard engineering practices.

Proposed new §217.209, Constructed Wetlands, includes general requirements for artificially constructed wetlands designed to simulate natural wetland ecologic conditions based on advances in engineering design.

Proposed new §217.209(a) authorizes the construction of wetlands at wastewater treatment facilities that are either free surface water systems (FWS) or subsurface flow systems (SFS).

Proposed new §217.209(b) prohibits the use of natural wetlands in order to protect them and clarify that constructed wetlands may not use any water in the state, as defined by Texas Water Code, §26.001(5).

Proposed new §217.209(c) established the general design criteria for constructed wetlands. Later sections address the two different types of constructed wetlands.

Proposed new §217.209(d) specifies that a constructed wetland must have a diverse vegetative community. This subparagraph also specifies that a constructed wetland may have both emergent and floating aquatic vegetation to maintain a diverse vegetative community suitable to local growing conditions. An acclimated and diverse vegetative community helps minimize adverse impacts from potential disease, insect pests, or species-specific toxicity.

Proposed new §217.209(d)(4) requires that the plans for harvesting aquatic plants from waters of the state must be reviewed with the United States Corp of Engineers to determine if regulatory coordination is required. This requirement is consistent with 40 CFR §122.2 and the Clean Water Act, §404. The use of indigenous plants is recommended, if the species have demonstrated they are effective for use in a constructed wetlands wastewater environment.

Proposed new §217.209(d)(5) requires that procurement of seed plants from natural wetlands must assure minimum impact on the harvested plant community. The use of indigenous plants is recommended, if these species have demonstrated they are effective for use in a constructed wetlands wastewater environment.

Proposed new §217.209(d)(6) specifies that the Texas Parks and Wildlife Department must approve use of all harmful or potentially harmful wetlands plants and organisms, as described in 31 TAC §§57.111 - 57.118 and 31 TAC §§57.251 - 57.258. This rule requires that the report identify the wetlands plants and organisms that will be used so that the executive director can ensure compliance with this requirement.

Proposed new §217.209(e) sets the maintenance requirements for constructed wetlands.

Proposed new §217.209(e)(1) prohibits the use of herbicides, insecticides, and fertilizers. Without an individual review of each chemical being discharged, a chemical could cause a water quality violation in the receiving stream.

Proposed new §217.209(e)(2) contains the requirements for floating material removal. For proper functioning, constructed wetlands systems must remove the primary treated effluent algal mat or other floating materials prior to entering the wetlands. The use of covered primary treatment systems may eliminate the need for algal mat removal. The rule also requires the removed floating material be stored and disposed of in a way to minimize nuisance odors. The disposal practices must conform to the requirements in Chapter 330.

Proposed new §217.209(e)(3) requires that the facility operations and maintenance manual include the maintenance of emergent and aquatic vegetation in constructed wetlands. Periodic removal of dead plant matter and detritus must prevent damage to living plants, liners, and system hydraulics. Constructed wetlands maintenance may include promoting active growth, controlling of mosquitoes, maintaining hydraulic capacity, and must not result in a deterioration of water quality. This provision is included to ensure that the manual contains the information necessary to operate the facility and so that the executive director can ensure compliance during the executive director's review.

Proposed new §217.209(f) requires that a properly functioning wetlands system be allowed to mature before wastewater effluent is processed. This requirement is included to ensure that constructed wetlands have adequate time for flow ecosystems to mature since mature ecosystems are required for effective wastewater treatment. It also requires the report to include the plan for establishing the constructed wetland before wastewater is introduced

Proposed new §217.209(g) specifies that the liners for wetlands systems must comply with the requirements of §217.203(3) and (4) and prohibits synthetic liners in wetland systems. A minimum 6 inch layer of productive topsoil must be placed above the liner to encourage subgrade root penetration. This requirement is included to protect against contamination of groundwater and to conform to standard engineering practices.

Proposed new §217.209(h) contains the requirements for berms. These requirements are included to prevent erosion of the side slopes and to conform to standard engineering practices and to allow synthetic side slopes to provide flexibility in designing berms.

Proposed new §217.209(i) requires that a constructed wetland must be protected from a 100-year flood event in accordance with the requirements of §217.35.

Proposed new §217.209(j) specifies that all constructed wetlands intended to provide nitrification are innovative and nonconforming technology, subject to §217.7(b)(2). The provision authorizes the executive director to consider these facilities on a case-by-case basis because of the inherent site-specific nature of nitrification at an individual treatment facility.

Proposed new §217.209(k) authorizes constructed wetlands to be used as secondary treatment units, advanced secondary treatment units, or as a means of polishing wastewater effluent. This provision specifies how the engineer may use FWS wetlands and SFS wetlands.

Proposed new §217.210, Constructed Wetlands--Free Water System (FWS) Design, contains the design criteria for FWS wetlands, which are shallow open water bodies and populated principally by emergent plants. Wastewater flows through the wetland, primarily in a horizontal direction, and is treated by a variety of physical, biological, and chemical processes.

Proposed new §217.210(a) requires a FWS wetlands design to be based on a maximum water depth of no more than 24 inches in emergent vegetation areas at design flow. Chapter 317 set the maximum depth at 18 inches, but 24 inches allows greater flexibility in design and plant selection.

Proposed new §217.210(b) sets the standards for plants in an FWS. Plant spacing must allow for growth of the wetlands flora ecosystem under normal conditions. The rule prohibits floating plants because flowing water would continually displace them.

Proposed new §217.210(c) requires the FWS to meet permitted effluent limits with any single cell removed from service. This requirement ensures that the design will be able to meet a wastewater facility's permit requirement during routine maintenance or emergency repair of an FWS cell.

Proposed new §217.210(d) requires that an FWS wetland cell have adequate bottom slope to facilitate drainage for maintenance and to maintain appropriate wetlands water depth range along the entire wetlands length under all anticipated operational flow conditions. This allows flexibility to meet local conditions in the design of the cell.

Proposed new §217.210(e) requires parallel treatment trains to increase operational flexibility and to allow routine maintenance without compromising the system.

Proposed new §217.210(f) requires that an FWS wetland cell be oriented to avoid cross winds perpendicular to the process flow direction or use elevated berms or vegetative windbreaks to prevent cross winds. The provision allows the use of elevated berms or vegetative windbreaks, which were not allowed in Chapter 317, to provide more flexibility to meet the needs of the topographical area of the constructed wetland.

Proposed new §217.210(g) contains the requirements relating to FWS inlets and outlets.

Proposed new §217.210(g)(1) requires that the FWS inlets and outlets of a wetland assure uniform flow across the cell. This requirement is included to prevent localized overloading on the treatment system.

Proposed new §217.210(g)(2) requires inlets and outlets to minimize erosion of wetlands substrate by controlling locally high flow velocities.

Proposed new §217.210(g)(3) requires inlet and outlets to allow variations in operational water level to ensure that the cell can treat a fluctuating flow volume.

Proposed new §217.210(g)(4) requires that the inlets be submerged under normal operational conditions to reduce the potential for odors.

Proposed new §217.210(g)(5) specifies that the design allow inspecting and cleaning of inlet and outlet devices for routine maintenance.

Proposed new §217.210(i) contains the design requirements for organic loading and treatment efficiencies of an FWS.

Proposed new §217.210(i)(1) authorizes a constructed wetlands design to be based on organic loading of the facility's primary or secondary effluent. This requirement is included because suspended solids removal efficiency normally does not require separate design consideration, being equally efficient or more efficient than organic removal efficiency.

Proposed new §217.210(i)(2) requires the organic removal treatment efficiency for FWS wetlands be based on the areal loading rate equation (Equation H.3), unless the report justifies an alternate method, the source of the method, and all supporting calculations. This provision is included to allow more site-specific calculations for each FWS wetland.

Proposed new §217.210(j) contains the requirements for vector control.

Proposed new §217.210(j)(1) requires mosquito control using mosquito fish, (Gambusia) other natural predators, aerobic conditions, and other biological controls.

Proposed new §217.210(j)(2) requires design controls to minimize the potential damage to wetlands caused by mammals such as nutria and muskrats, which can damage FWS wetland systems by burrowing into the berms.

Proposed new §217.211, Constructed Wetlands--Subsurface Flow System (SFS) General Design, contains the design criteria for SFS constructed wetlands, which are shallow water bodies populated by various floating and emergent plants. Wastewater flow in SFS wetlands is maintained below the surface of a porous media, such as gravel, where the emergent plants are rooted. Wastewater flows primarily in a horizontal direction and is treated by a variety of physical, biological, and chemical processes.

Proposed new §217.211(a) specifies that SFS media must allow root penetration. Treatment efficiency generally improves with effective root penetration through the entire wetted media depth. The provision requires the report to identify the wetted subsurface media so that the executive director can ensure compliance.

Proposed new §217.211(b) requires that the operational water depth of an SFS wetland not exceed the lesser of 18 inches at design flow or the maximum anticipated root penetration for the emergent plant species.

Proposed new §217.211(c) requires seasonal draw down of the water level to encourage deeper root penetration into the wetted media. This requirement ensures plants have adequate root penetration to grow to maturity and encourages new plant growth.

Proposed new §217.211(d) requires that plant spacing must not exceed 36 inches and be based on the size of the mature plant. The vegetation in an SFS wetland system will take at least one full growing season to mature and that adequate spacing allows for growth of the plants. The requirements for plant spacing are included to ensure that the wetland system will reach maturity in an efficient time frame.

Proposed new §217.211(e) contains the configuration requirements for SFS.

Proposed new §217.211(e)(1) requires multiple cells that may be operated independently, allowing individual cells to be removed from service while maintaining system operations. This provision allows the number of cells that are in service to match the amount of flow that the facility is receiving.

Proposed new §217.211(e)(2) requires that the size of the cells continue to meet permit effluent limits with any single cell out of service. This provision allows the operator to perform routine maintenance without compromising the treatment system.

Proposed new §217.211(e)(3) contains the hydraulic design requirements. An SFS wetland must maintain a minimum media cover to ensure that the cell does not dry out.

Proposed new §217.211(e)(4) specifies that the maximum wetted media depth of an SFS wetland is the lesser of 24 inches at design flow, or the maximum anticipated root penetration for the planned primary population of emergent plant species. Additionally, an SFS wetland must have a dry media cover depth of 6 to 9 inches above the design flow hydraulic gradient. These requirements are included because the hydraulic profile of SFS wetlands may be significantly steeper than FWS systems.

Proposed new §217.211(e)(6) specifies that an SFS wetland must provide parallel treatment trains must be provided to increase operational flexibility. This rule ensures consistency with the free water surface system requirements in this section.

Proposed new §217.211(f) requires the design to include minimum flow distribution, submergence, maintenance, and staged influent feed standards for an SFS system. Constructed wetlands treatment efficiency depends on effective flow distribution, loading, maintenance, and depth of the water. These requirements are included to ensure that the design meets certain minimum standards.

Proposed new §217.211(g) contains the requirements for SFS organic loading and treatment efficiency. This provision is included to allow more site-specific calculations to determine the total suspended solids (TSS) and biochemical oxygen demand (BOD) information for each SFS wetland.

Proposed new §217.211(h) requires that temperature the design of the SFS be adequate to provide treatment at the temperatures expected.

Proposed new §217.211(i) specifies that the vegetation maintenance practices be part of an SFS design. This requirement is included to reduce mosquito breeding opportunities.

Proposed new §217.211(j) requires that the media must be hard rock, slag, or other clean, comparable media material. Synthetic media is nonconforming technology and subject to §217.7(b)(2). These requirements ensure that the proper media is included in the design of an SFS.

Proposed new §217.212, Overland Flow Process, requires that an overland flow process be reviewed as a nonconforming technology. This system does not have a successful track record in Texas.

Proposed new §217.213, Integrated Facultative Lagoons, sets the requirements for new engineering design of integrated facultative lagoons, which the executive director will consider nonconforming technology. The section provides design criteria for integrated facultative lagoons including configuration of inlets and outlets, depth, organic loading, odor control, and removal efficiency.

All the requirements in this section are based on research conducted by Texas Tech University. Research using small-scale facilities has shown that a deeper pit in a facultative lagoon located in the center of the lagoon allows the lagoon to produce a higher quality of effluent using a smaller amount of land. The commission is incorporating the research into this section to provide another option for designing integrated facultative lagoons. This technology can help to reduce the cost and natural resources required for a lagoon system. To ensure that lagoons designed using this research are appropriate for full-scale facilities, the executive director will review all integrated facultative lagoons as nonconforming technology.

SUBCHAPTER J. SLUDGE TREATMENT UNITS

Subchapter J contains more detailed requirements than were contained in Chapter 317. Sludge management and sludge handling technology has advanced as disposal has become more expensive and more of a public issue. Today, there are more environmentally compatible ways to manage sludge, many, such as beneficial land application, enhance the environment rather than taxing it like landfilling sludge.

Proposed new §217.241, General Requirements, sets the minimum design requirements for sewage sludge treatment processes and treatment units; defines the sludge process to include thickening, stabilization, and dewatering; and requires the engineer to base the selection and operation of the sludge unit processes on the final sludge product. Additionally, this section requires that all municipal wastewater treatment facilities that dispose of sludge under Chapter 312 must stabilize the sludge and that all municipal wastewater treatment facilities that dispose of sludge under Chapter 330 must comply with the requirements of that chapter.

Proposed new §217.242, Control of Sludge and Supernatant Volumes, contains the requirements for controlling sludge supernatant volumes. This section ensures that the facility will transfer waste sludge to the sludge digester in a manner that minimizes the volume of digester supernatant. The supernatant from thickeners and digesters must be returned to the head of the treatment works or to the aeration system.

Proposed new §217.243, Sludge Pipes, provides the requirements for pipes used in the treatment of sludge. The piping design must be an adequate size, allow for cleaning, and prevent blockages and corrosion.

Proposed new §217.244, Sludge Pumps, contains the design standards for sludge transfer pumps, based on the quantity and character of the anticipated solids load and adequate redundancy.

Proposed new §217.245, Exclusion of Grit and Grease from Sludge Treatment Units, incorporates provisions of Chapter 312 into the design criteria for wastewater treatment facilities. These provisions are included to ensure that the design criteria rules are consistent with Chapter 312 requirements.

Proposed new §217.246, Ventilation and Odor Control, provides the ventilation requirements for wastewater treatment facilities to eliminate the presence of fumes or gases. This requirement is included to ensure that the design of the ventilation system eliminates the danger to human health and the environment in areas where the presence of fumes or gases rise to a level that might constitute a public health hazard or a threat to air quality. It also requires the sludge treatment design to minimize potential nuisance odors.

Proposed new §217.247, Chemical Pretreatment of Sludge, establishes criteria incorporating new state and federal requirements from 40 CFR Part 503 and Texas Health and Safety Code, Chapter 361, for the use and handling of chemicals used to enhance solids removal, necessary for many sludge treatment or processing units.

Proposed new §217.247(a) requires that chemical used in the pretreatment of sludge be compatible with the treatment process and not affect water quality.

Proposed new §217.247(b) requires that the choice and amount chemicals be based on pilot or field data.

Proposed new §217.247(c) requires chemicals to be stored safely.

Proposed new §217.247(d) states the requirements for a liquid storage tank.

Proposed new §217.247(e) requires activated carbon properly stored due to its combustible properties.

Proposed new §217.247(f) requires explosion-proof electrical devices in areas where volatile or explosive chemicals are used.

Proposed new §217.247(g) prohibits the discharge of volatile chemicals.

Proposed new §217.247(h) requires the facility to maintain a 30-day supply of needed chemical to ensure uninterrupted operations, unless an alternate method of ensuring uninterrupted service is included in the report.

Proposed new §217.247(i) requires chemical tanks to be an adequate size to operate at design flow.

Proposed new §217.247(j) requires written procedures for measuring chemical mixed into solutions to ensure that solutions contain the appropriate amount of each chemical required for treating sludge.

Proposed new §217.247(k) requires tank and pipe material to be appropriate to the chemicals being used. The material should be resistant to any reaction caused by the chemicals in use.

Proposed new §217.247(l) prohibits mixing chemicals prior to preparing the feed solution to prevent unintended chemical reactions.

Proposed new §217.247(m) prohibits storing a concentrated liquid acid in an open vessel and requires it be transferred directly to the point of use. This requirement is included to prevent

the chemical reactions that can concentrated acids can undergo when exposed to air or moisture.

Proposed new §217.247(n) requires concentrated liquid acid storage containers be able to prevent discharge or unintended chemical reactions.

Proposed new §217.247(o) requires a toxic material to be transferred by a device that is engaged by the action of a person or automatic controller upon demand. This requirement is included to protect facility staff, human health, and the environment.

Proposed new §217.247(p) requires that a facility have a method for dust control during the transfer of dry chemicals. This requirement is included to protect facility staff, human health, and the environment.

Proposed new §217.247(q) requires disposal of chemicals and chemical containers be done in compliance with the waste disposal requirements in Chapter 335.

Proposed new §217.247(r) contains the requirements chemical feed equipment, including structures, redundancy, design, capacity, spill containment, controls, scales, protection, water supply, solution tanks, and application. These requirements are included to ensure that the sludge pretreatment process is designed for adequate and safe operation.

Proposed new §217.248, Sludge Thickening, establishes minimum criteria for sludge thickening for use in volume reduction and conditioning as an aid to processing and managing the sludge waste stream. Sludge thickening is optional. If sludge thickeners are used, the criteria outlined in this section must be used.

Proposed new §217.248(a) contains general requirements for thickeners. Section 217.248(a)(1) requires that the thickeners be capable of operating during the two-hour peak flow. The commission proposes this requirement to be consistent with clarifier design requirements and disinfection design requirements. Section 217.248(a)(2) requires that the sludge thickening system have a bypass. All facilities with a design flow greater than 1.0 mgd must have dual units, an alternate means of thickening, or an alternate disposal method. This requirement ensures that the facility is designed to manage its sludge if the sludge thickening system is out of service.

Proposed new §217.248(b) contains the requirements for mechanical gravity thickeners that ensure these thickeners will meet engineering standards and properly thicken the sludge by allowing the solids to settle and the liquid to be scraped away. The requirements also ensure that the executive director has sufficient information to review the design of the thickeners.

Proposed new §217.248(c) contains the design criteria for dissolved air flotation thickeners, which includes equipment feature requirements and design requirements.

Proposed new §217.248(d) contains the design criteria for centrifugal thickeners. The executive director may require pilot or field data for the review of any centrifugal thickener design.

Proposed new §217.248(e) contains the design criteria for gravity belt thickeners, which includes equipment feature requirements and design requirements.

Proposed new §217.249, Sludge Stabilization, contains the requirements for sludge stabilization based on requirements in 40 CFR Part 503 and Chapter 312. This provision addresses the stabilization processes including anaerobic digestion, aerobic sludge digestion, heat stabilization, and alkaline addition. In addition, the section states the requirements for anaerobic digesters. Additionally, the design requirements for the stabilization processes in this section are based on the assumption that the process is the sole stabilization process employed at the facility. If a facility employs series of two or more stabilization processes or methods, the report must justify a variance for reducing these requirements.

Proposed new §217.249(c) contains the requirements for anaerobic digestion. Section 217.249(c)(1) requires that a facility with a design flow exceeding 0.4 mgd have a minimum of two anaerobic digesters, so each digester may be used as a first stage or primary reactor for treating primary and secondary sludge flows. Each digester must have the means for transferring a portion of its contents to other digesters. A facility without multiple digesters must have an emergency storage basin, so the digester may be taken out of service. This provision allows the operator to perform routine maintenance without compromising the treatment system.

Proposed new §217.249(d) specifies that the anaerobic digester must provide a minimum of six feet of storage depth for supernatant liquor. This requirement is included to be consistent with standard engineering practice.

Proposed new §217.249(e) requires that the design allow access to all units that require maintenance. This provision allows the operator to perform routine maintenance without compromising the treatment system.

Proposed new §217.249(f) requires that a digester bottom slope towards the withdrawal drain pipe. The rule prohibits a flat-bottomed digestion chamber. The requirement is included to ensure the effective removal of the digester contents.

Proposed new §217.249(g) requires that the top of the digester have at least two access manholes and a gas dome. One manhole must have sufficient diameter to permit the use of mechanical equipment to remove grit and sand. A digester system must have a separate side wall manhole at ground level. This requirement is included to ensure that the digester is accessible for maintenance without compromising the system.

Proposed new §217.249(h) requires that the operation and maintenance manual require the use of non-sparking tools, rubber-soled shoes, safety harness, gas detectors for flammable and toxic gases, and at least one self-contained breathing apparatus. These requirements are included to ensure that unsafe working conditions for facility staff do not interrupt or stop the functions of the facility. An interruption of the treatment processes at a facility could compromise the protection of human health and the environment.

Proposed new §217.249(i) requires that a digester have multiple sludge inlets, outlets, and at least three recirculation sections and discharge points to facilitate effective mixing of the digester contents. One inlet must discharge above the liquid level and be located at the center of the digester. Raw sludge inlet discharge points must be located to minimize short circuiting to the supernatant draw-off. This requirement is included to ensure consistency with standard engineering practices.

Proposed new §217.249(j) contains the requirements for digester capacity. The digester capacity must be designed to process the expected volume and character of the sludge. The report must include the calculations to justify the basis of design. These requirements are included to ensure that the

executive director has sufficient information to review the design for digester capacity and to be consistent with requirements in Chapter 312 and 40 CFR Part 503.

Proposed new §217.249(k) contains the requirements for gas collection pipes, storage, and appurtenances. This rule is included to be consistent with standard engineering practices and to allow routine maintenance without compromising the treatment system.

Proposed new §217.249(l) requires that the waste gas burners be accessible and must be located at least 50 feet away from any structure if placed at ground level. The waste gas burners may be located on the roof of the control building. The waste gas burners must not be located on top of the digester. The discharge of less than 100 cubic feet per hour (CFH) of digester gas through a return bend screened vent with a flame trap terminating at least 10 feet above the walking surface is allowed. These requirements are included to ensure that unsafe working conditions for facility staff do not interrupt the functions of the facility. An interruption of the treatment processes at a facility could compromise the protection of human health and the environment.

Proposed new §217.249(m) requires that all underground enclosures connected to anaerobic digesters tanks, gas pipes, or sludge equipment have forced ventilation in accordance §217.246. All underground enclosures must include tightly fitting, self-closing doors to minimize the spread of gas. This requirement is included to prevent the accumulation of explosive gases in underground enclosures.

Proposed new §217.249(n) requires that the system have a gas meter with a bypass to measure total gas production, which is an indicator of the activity in the digester. This requirement is included to authorize the operator to monitor the activity in the digester.

Proposed new §217.249(o) requires that the gas manometers have shut-off vents and vent cocks. The vent pipes must extend outside the buildings. The vent pipe openings must have screens and be arranged to prevent the entrance of rainwater, which can cause fouling of the manometers. The safety devices are required for the manometer pipe system.

Proposed new §217.249(p) requires the gas pipes for anaerobic digesters be equipped with pressure gauges. These requirements are included to ensure that unsafe working conditions do not interrupt the functions of the facility. An interruption of the treatment processes at a facility could compromise the protection of human health and the environment.

Proposed new §217.249(q) contains the requirements for digestion temperature control. These requirements are included to be consistent with standard engineering practices.

Proposed new §217.249(r) contains the requirements for supernatant withdrawal. This requirement is included to ensure the proper operation of the digester, to prevent damage to the unit, and to ensure that the executive director has sufficient information to review the report.

Proposed new §217.249(s) contains the requirements for digester covers. It prohibits uncovered anaerobic digesters; requires pipes be arranged to minimize air in the gas chamber; requires a digester cover to include a gas chamber, be gas tight, be tested, and be equipped with an air vent with a flame trap, a vacuum breaker, and a pressure relief valve.

Proposed new §217.249(t) contains the requirements for aerobic sludge digestion and applies to the stabilization of waste sludge to Class B biosolid by aerobic digestion. Class B biosolid is defined in Chapter 312. This requirement is included to be consistent with Chapter 312 and to ensure that the executive director has sufficient information to review the report. Proposed new §217.249(t)(5) - (7) is included to ensure the efficient operation of the system and to be consistent with Chapter 312 and 40 CFR Part 503.

Proposed new §217.249(u) contains the requirements for heat stabilization. The system must operate continuously to minimize additional heat input required to start up the system. This requirement is included to be consistent with standard engineering practices Chapter 312 and 40 CFR Part 503.

Proposed new §217.249(v) requires that the report must identify the method of treatment for recycle streams from heat treatment. The recycle streams must not impact effluent quality or the facility's treatment processes. This requirement is included to ensure that the executive director has sufficient information to review the report and to be consistent with standard engineering practices.

Proposed new §217.249(w) contains the requirements for alkaline stabilization. The design must include provisions for maintenance and repair based on data from comparable facilities and adequate storage for process, feed, and downtime. This requirement is included to be consistent with standard engineering practices Chapter 312 and 40 CFR Part 503, for vector and pathogen reduction. It also ensures the executive director has sufficient information to review the report.

Proposed new §217.250, Sludge Dewatering, contains the minimum design criteria for comprehensive consideration of sewage sludge dewatering unit processes, including general requirements, sludge conditioning, sludge drying beds, modified drying beds, rotary vacuum filtration, centrifugal dewatering, plate and frame presses, and belt presses.

Proposed new §217.250(a) requires the report to include justification for the sludge dewatering design.

Proposed new §217.250(b) requires the sludge dewatering design be based on mass balance principles.

Proposed new §217.250(c) contains general dewatering requirements. Section 217.250(c)(1) requires the drainage from beds and centrate or filtrate from dewatering units to be returned to the head of the facility for treatment. The organic loading from the centrate or filtrate must be included in the design of the facility's treatment units.

Proposed new §217.250(c)(2) requires that the dewatering system not allow the release of constituents that threatens water quality or wastewater permit compliance.

Proposed new §217.250(c)(3) contains the requirements for redundancy. This provision is included to allow operations during breakdowns and routine maintenance without compromising the treatment system and to be consistent with standard engineering practices.

Proposed new §217.250(c)(4) contains storage requirements. These requirements are included to prevent nuisance odor conditions, to be consistent with standard engineering practice, and to ensure the protection of human health and the environment.

Proposed new §217.250(c)(5) requires that the dewatering system have sampling stations before and after each dewatering

unit or any other segment of the unit identified in the report and allow periodic evaluation of the dewatering process. This requirement is included to ensure efficient operation of the facility.

Proposed new §217.250(c)(6) requires that all dewatering system units must have bypass capabilities to allow maintenance. This provision is included to authorize the operator to perform routine maintenance without compromising the treatment system.

Proposed new §217.250(d) contains the requirements for sludge conditioning. These requirements are included to be consistent with standard engineering practices and to ensure that the executive director has sufficient information to review the report.

Proposed new §217.250(e) contains the requirements for sludge drying beds. The sludge drying beds size must be based on data from similar facilities in the same geographical area with the same influent sludge characteristics. If such data is unavailable, or if the executive director determines that the data is not appropriate for the proposed facility, the sludge drying bed design must be based on the requirements in §217.250(e)(2) - (5). These requirements are included to authorize a sludge drying bed to be designed for the geographic region, consistent with current engineering practices, and protective human health and the environment.

Proposed new §217.251, Sludge Storage, contains specific criteria for the storage of residuals after processing and prior to final disposal or removal from the site, including general criteria, solids storage, dewatered solids storage, and dried solids storage to protect the environment. Staff experience has shown that some facility designs have failed to include sludge storage.

Proposed new §217.251(a) specifies that this section applies to sludge after processing and before disposition or disposal.

Proposed new §217.251(b) states that sludge may be stored in liquid, dewatered, or dry forms, if properly processed.

Proposed new §217.251(c) contains general requirements. These requirements are included to ensure that the sludge storage minimize nuisance conditions. Additionally, the requirement that the report include a solids management plan is to ensure that the executive director has sufficient information to ensure compliance with these rules.

Proposed new §217.251(d) contains the requirements for non-dewatered solids storage that are consistent with standard engineering practices. Section 217.251(d)(2) authorizes a storage facility to store anaerobically digested solids in covered basins that control odor. The executive director determined that this option is protective of human health and the environment.

Proposed new §217.251(e) contains the requirements for dewatered solids storage. The commission proposes these requirements to be consistent with standard engineering practices.

Proposed new §217.251(f) contains the requirements for open stockpiles, including an impervious pad and the ability to collect rainfall runoff and return it to the head of the treatment facility. Because rainfall runoff from stockpiles will not meet the discharge limits for storm water, the water must be treated.

Proposed new §217.251(g) contains the requirements for dried solids storage. This requirement is included to be consistent with standard engineering practices.

Proposed new §217.252, Final Use or Disposal of Sludge, contains the criteria for the final use or disposal of sewage sludge, including quantities of solids, pollutants, pathogens, vector attraction, emergency provisions and weather factors.

Proposed new §217.252(b) requires the quantity of solids generated by the treatment process must be based on similar full scale facilities or pilot facilities and a mass balance. This requirement is included to be consistent with Chapter 305.

Proposed new §217.252(c) requires the sludge use or disposal option be based on the character of the sludge. The pollutant levels must be less than the levels specified in §312.82 and determined by Standard Method's laboratory test procedures.

Proposed new §217.252(d) requires that metals, pathogens, and vector attraction meet the requirements of Chapter 312 concerning the ultimate use or disposal method.

Proposed new §217.252(e) requires that the design include a backup plan in the event of equipment failure or conditions that prevent the facility's primary use or disposal method. The requirement to include the secondary plan in the report ensures that the executive director has sufficient information to review the design.

Proposed new §217.252(f) requires the design to include contingencies for weather factors such as rainfall, wind conditions, and humidity in the selection of the use or disposal of sewage sludge. This requirement is included to account for site-specific conditions.

SUBCHAPTER K. CHEMICAL DISINFECTION

The requirements in this subchapter are related to disinfecting treated effluent with chlorine and the subsequent dechlorination of the effluent. Chlorine and sulfur dioxide are toxic, oxidizing chemicals, which makes them very effective for disinfection and dechlorination. But, both are harmful or fatal if inhaled. These required specifications represent commonly accepted best practices for the safe handling of these hazardous chemicals and should be considered minimum requirements to protect facility staff, the public, and the environment.

The requirements also ensure consistency with permitting requirements for facilities that use chlorination disinfection and have a Texas Pollutant Discharge Elimination System (TPDES) permit that are required to conduct biomonitoring. Dechlorination is a requirement of these permits.

Proposed new §217.271, Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination System Redundancy Requirements, contains the redundancy requirements to ensure continuing operation of the disinfection system.

Proposed new §217.271(a) requires each chlorine disinfection system to have at least two banks of chemical cylinders.

Proposed new §217.271(b) requires that a bank of cylinders automatically switch from an empty bank to a full bank of cylinders in a manner that ensures continuous disinfection.

Proposed new §217.271(c) requires that the facility to have sufficient space to store empty cylinders.

Proposed new §217.271(d) requires that the chemical delivery system so that the pound per day requirements in §217.272 are met with the largest chlorinator, sulfonator, or evaporator out of service.

Proposed new §217.271(e) requires that a chemical delivery system include backup pumps for any injector water supply systems requiring booster pumps. These requirements are

included to ensure that this subsection is consistent with the other redundancy requirements in this rule.

Proposed new §217.272, Capacity and Sizing of Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems, contains the requirements for determining capacity and size of the system.

Proposed new §217.272 (a) requires the capacity of the chlorine and sulfur dioxide gas withdrawal systems be based on the two-hour peak flow in accordance with organic and hydraulic loading requirements in §217.32(1), Equation K.1 (a standard engineering equation), and Table K.1 (minimum concentration needed for disinfection). This requirement is included to ensure consistency in the design criteria rules.

Proposed new §217.272(b) establishes the minimum chlorine dosage necessary for disinfection in Table K.1.

Proposed new §217.272(c) requires the dechlorination system design to include at least an equal amount of sulfur dioxide as chlorine.

Proposed new §217.273, Cylinder Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems, contains the general requirements for using chemicals stored in cylinders for disinfection and dechlorination.

Proposed new §217.273(a) requires gas withdrawal rates to be based on Equation K.2, using the variables in Table K.2 and sets maximum withdrawal rates for liquid chemicals. It also prohibits the use of heating blankets on chlorine gas cylinders.

Proposed new §217.273(b) sets the number of cylinders required based on Equation K.3.

Proposed New §217.274, Dosage Control for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems, requires systems to have automatic controls that adjust chemical levels to meet effluent flow levels.

Proposed New §217.275, Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems Using 150 pound (lb) Cylinders, contains the requirements for the smaller of the two cylinder sizes that facilities can use. Chemicals are always withdrawn from this size cylinder in a gaseous state.

Proposed new §217.275(a) states the requirements for storing cylinders in heated rooms.

Proposed new §217.275(b) states the requirements for using heating blankets on cylinders. Heating blankets are prohibited on chlorine cylinders because of the inherent dangers of chlorine. Heating blankets may be used on sulfur dioxide cylinders, but only if it does not heat the cylinder above 100 degrees and has the required safety features.

Proposed new §217.275(c) requires that chlorine and sulfur dioxide cylinders are stored separately and are handled so that they never come into close proximity to each other.

Proposed new §217.276, Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems Using Gas Withdrawal from One-Ton Cylinders, contains the requirements for using the larger cylinder size and drawing the chemicals from them in the gaseous state.

Proposed new §217.276(a) requires the equipment that injects the chemicals into the effluent to be in a temperature controlled room because temperature affects gas pressure and therefore the chemical dosing levels.

Proposed new §217.276(b) states the requirements for storing cylinders outdoors, including the requirements for sizing, storage facilities, and piping.

Proposed new §217.276(c) prohibits the use of heating blankets on chlorine cylinders and proscribes the requirements for using heating blankets on sulfur dioxide cylinders.

Proposed new §217.276(d) states the requirements for maintaining the separation between chlorine cylinders and sulfur dioxide cylinders.

Proposed new §217.277, Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Disinfection Systems Using Liquid Withdrawal from One-Ton Cylinders, contains the requirements related to withdrawing chemicals from large cylinders in a liquid state.

Proposed new §217.277(a) requires the equipment that injects the chemicals into the effluent to be in a temperature controlled room because temperature affects gas pressure and therefore the chemical dosing levels. Even with liquid withdrawal, chemicals are in a gaseous state when injected into the effluent stream.

Proposed new §217.277(b) requires withdrawal at the limits set in §217.273(a)(2).

Proposed new §217.277(c) states the requirements for maintaining the separation between chlorine cylinders and sulfur dioxide cylinders.

Proposed new §217.278, Housing Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) and Dechlorination Systems, contains the requirements for housing facilities for chemicals, including drainage, door and windows, ventilation, and gas detectors and protection.

Proposed new §217.278(a) requires that the drainage system for a room that contains either chlorine or sulfur dioxide be separate from every other drain system to ensure that chlorine or sulfur dioxide does not migrate into other areas and does not mix with any other substances.

Proposed new §217.278(b) contains the requirements for openings into a room that contains chlorine or sulfur dioxide equipment or cylinders. These requirements ensure the safety of facility staff and the safe operation of the disinfection system.

Proposed new §217.278(c) requires that any room that contains chlorine or sulfur dioxide equipment or cylinders have ventilation sufficient to prevent a buildup of chemical fumes. These requirements ensure the safety of facility staff and the safe operation of the disinfection system.

Proposed new §217.278(d) requires that any room that contains pressurized chlorine or sulfur dioxide equipment or cylinders have detection and protection devices. These requirements ensure the safety of facility staff and the safe operation of the disinfection system.

Proposed new §217.279, Equipment and Material Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems, includes the specification necessary to ensure that equipment and material used in chlorine/sulfur dioxide systems are appropriate for that use.

Proposed new §217.279(a) ensures that equipment and materials used in these systems were designed and manufactured to be compatible with these chemicals.

Proposed new §217.279(b) ensures that cylinders are stored appropriately.

Proposed new §217.279(c) contains the requirements for gas piping for chlorine/sulfur dioxide systems. These requirements ensure the safe transfer of chemicals in a gaseous state.

Proposed new §217.279(d) contains the requirements for piping for liquid chlorine/sulfur dioxide. These requirements ensure the safe transfer of chemicals in a liquid state.

Proposed new §217.280, Design of Sodium Hypochlorite (NaClO) Disinfection and Sodium Bisulfite ($NaHSO_3$) Dechlorination Systems, contains the requirement for systems that use alternate chemicals to achieve chlorination and dechlorination.

Proposed new §217.280(a) contains the requirements to ensure that the system can operate during times that a pump is out of service.

Proposed new §217.280(b) contains the capacity sizing requirements for a sodium hypochlorite/sodium bisulfite system. These requirements ensure that the designed size of the system is appropriate for the amount and properties of the facility's effluent.

Proposed new §217.280(c) contains the requirement for automatic control of positive-pressure chemical dosing.

Proposed new §217.280(d) contains the requirements for proper chemical handling, including storage and temperature considerations. These requirements ensure the safe storage and transfer of sodium hypochlorite and sodium bisulfite.

Proposed new §217.280(e) requires that the equipment and materials used in a sodium hypochlorite/sodium bisulfite system be designed and manufactured to be compatible with these chemicals.

Proposed new §217.280(f) contains the safety requirement for a hypochlorite/sodium bisulfite system, including ventilation, tank indicator, spill containment, and emergency and protective equipment for facility staff. These chemicals are liquid and are therefore not as great a safety risk as chlorine and sulfur dioxide.

Proposed new §217.281, Application of Chlorination and Dechlorination Chemicals, contains the requirements to ensure that chemicals are added to effluent in an effective manner.

Proposed new §217.281(a) requires that chlorine is thoroughly mixed with effluent before the calculation of the chlorine contact time begins.

Proposed new §217.281(b) ensures that chlorine contact basins are properly sized to allow the necessary chlorine contact time.

Proposed new §217.281(c) ensures that the effluent is dechlorinated sufficiently to meet the limits of the facility's permit.

Proposed new §217.282, Other Chemical Disinfection or Dechlorination Processes, requires that any chemical process not covered by Subchapter K must be approved through the variance process in §217.7(b)(2).

Proposed new §217.283, Post-Disinfection Requirements, contains the design requirements necessary for the treatment train after the disinfection units.

Proposed new §217.283(a) requires the design include a sufficient number access points from which effluent samples may be taken so that the system may be monitored and adjust to keep the disinfection/dechlorination process within the limits of the wastewater permit.

Proposed new §217.283(b) requires that the disinfection/dechlorination system be designed to be capable of maintaining the permitted dissolved oxygen levels in the effluent. For facilities with high dissolved oxygen minimum limits, the report must justify the design.

SUBCHAPTER L. ULTRAVIOLET LIGHT DISINFECTION

This subchapter regulates the use of ultraviolet light to disinfect wastewater. Ultraviolet (UV) is a growing segment of the disinfection technology. An advantage of UV disinfection is that it does not require the addition of chemicals and thereby avoids the environmental impact of production, transport, and disposal of disinfection chemicals.

Proposed new §217.291, Ultraviolet Light Disinfection Systems Definitions, contains definitions specific to this subchapter.

Proposed new §217.292, Ultraviolet Light Disinfection Systems Effluent Limitations, requires UV systems to be designed with the capability of meeting the permit limits regarding disinfection in the facility's wastewater permit.

Proposed new §217.293, Ultraviolet Light Disinfection System Redundancy Requirements, requires UV systems to have sufficient backup equipment to be able to provide disinfection during equipment outages for maintenance or repairs.

Proposed new §217.294, Ultraviolet Light Disinfection System Monitoring and Alarms, contains the monitoring and alarm requirements that allow an operator to monitor and adjust the UV system and alert an operator of a problem. This requirement is included to ensure proper operations during normal operating and emergency situations.

Proposed new §217.295, Ultraviolet Light Disinfection Dosage and System Sizing, contains the requirement for designing the amount of UV required and the size of the UV system. This requirement is included to ensure that a UV system is capable of delivering adequate disinfection to meet permitted effluent limits.

Proposed new §217.296, Ultraviolet Light Disinfection Bioassay Test Procedure, contains the requirement for the bioassay test used as the basis for UV dosing and system sizing. This requirement is included to ensure the reliability of the bioassay.

Proposed new §217.297, Ultraviolet Light Disinfection Reactor Design, contains the specifications for a UV reactor. This requirement is included to ensure the UV reactor meets engineering standards.

Proposed new §217.298, Ultraviolet Light Disinfection System Cleaning and Maintenance, contains the requirement that the design of a UV system must allow adequate cleaning and maintenance. This requirement is included because cleaning and maintenance are essential for proper operation of a UV system.

Proposed new §217.299, Ultraviolet Light Disinfection System Safety, contains the requirement that personal safety equipment must be worn by any person entering the UV area. This requirement is included to protect operators, contractors, investigators and any other person who might be exposed to UV light by the UV disinfection system.

Proposed new §217.300, Post-Disinfection Requirements, contains the design requirements necessary for the treatment train after the disinfection units.

Proposed new §217.300(a) requires the design include a sufficient number of access points from which effluent samples may be taken so that the system may be monitored and adjust to keep the disinfection process within the limits of the wastewater permit.

Proposed new §217.300(b) requires that the disinfection system be designed to be capable of maintaining the permitted dissolved oxygen levels in the effluent. For facilities with high dissolved oxygen minimum limits, the report must justify the design.

SUBCHAPTER M. SAFETY

Subchapter M is included to ensure that wastewater collection systems and treatment facilities provide safe working conditions. Safety-related incidents often result in an environmental threat or incident. To protect public health and the environment, a system or facility must be designed to be safe for the workers who operate it.

Proposed new §217.321, Safety Design, specifies the general safety guidelines for designing collection systems and treatment facilities.

Proposed new §217.321(a) requires a facility design to be based on a widely accepted safety design standard. This requirement is included to ensure that unsafe working conditions for staff do not interrupt the facility's functions.

Proposed new §217.321(b) requires collection system and treatment facility designs to address workplace safety and the safety of the public located near the system or facility.

Proposed new §217.321(c) requires the design specifies treatment processes that use non-hazardous, non-toxic, less hazardous, less toxic, dilute chemicals, and a minimum inventory of chemicals. This requirement is included to ensure that only the minimum amount of chemicals needed to produce a quality effluent are used. This will limit the likelihood of human exposure, spills, and contamination of groundwater or surface water.

Proposed new §217.321(d) requires that the applicable standards in 29 CFR Part 1910, Occupational Safety and Health Administration (OSHA), be the basis for the safety elements in the design of a collection system or treatment facility.

Proposed new §217.321(e) requires the owner to demonstrate compliance with this section by implementing §217.322 and §217.323. This requirement is included to ensure that the safety aspects of the design are verifiable.

Proposed new §217.322, Safety and Security Audits, requires a collection system or treatment facility owner to conduct both a safety audit of the working conditions and a security audit. The commission envisions these audits being conducted by the owner, the design engineer, and facility staff. The intent of this requirement is to ensure that safety and security are an integral part of any design.

Proposed new §217.322(a) requires that the owner of an existing facility being modified or expanded review the safety related injuries and incidents from the prior three years, identify problem locations and tasks, report any corrective action taken, and address any outstanding problems in the design of the facility upgrade.

Proposed new §217.322(b) authorizes an owner to evaluate the security of a collection system or treatment facility based on *Asset Based Vulnerability Checklist for Wastewater Utilities* by the Association of Metropolitan Sewerage Agencies (AMSA) or its equivalent. This section is included to be consistent with the National Homeland Security Act. At this time, the United States Department of Homeland Security is recommending, but not requiring, a security audit.

Proposed new §217.323, Hazardous Operation and Maintenance, requires an owner to perform an analysis of hazardous operation and maintenance activities for new, expanded, or modified facilities. From that analysis, the owner must develop an inventory of necessary equipment, tools, and supplies needed for each task. The tools supplied must be sufficient to allow workers to safely and properly operate equipment, to perform required preventive maintenance, and to make repairs according to manufacturers' recommendations.

Proposed new §217.324, Chemical Handling, requires that the necessary equipment is available for personnel to handle chemicals safely and to address any accident that may happen.

Proposed new §217.325, Railings, Ladders, Walkways, and Stairways, specifies criteria for the use of railings, ladders, walkways, and stairways contained in safety requirements from the Occupational Safety and Health Act, §1910.23.

Proposed new §217.326, Electrical Code, requires that electrical design must conform to local electrical codes or if none, to the National Electrical Code.

Proposed new §217.327, Non-Potable Water, explains that when non-potable water is made available to any part of the plant, all yard hydrants and outlets must be properly marked.

Proposed new §217.328, Facility Access Control, requires that the facility area be completely fenced, have lockable gates at all access points, and have a means of access during 100-year flood conditions. This requirement is included to allow flexibility in the access control design of a treatment facility.

Proposed new §217.329, Color Coding of Pipes, specifies the color coding for pipes used in a wastewater facility. Standardization of color coding makes it safer for staff who change facilities and commission investigators who visit many facilities. These colors were chosen because they correspond with national standards provided by the American Water Works Association (AWWA) and the Water Environment Federation (WEF). The colors for the wastewater and related pipes are from the WEF and the colors for water and related pipes are from the AWWA.

Proposed new §217.330, Public Drinking Water Supply Connections, requires a facility with a potable water connection to have double check backflow preventers at the water main and atmospheric vacuum breakers for all potable water wash down hoses. These requirements protect the potable water supply from cross contamination.

Proposed new §217.331, Freeze Protection, requires the facility design to prevent ice formation on equipment that might be damaged by ice and to prevent personnel from walking on icy surfaces.

Proposed new §217.332, Noise Levels, requires that the noise levels in all working areas must remain below standards established by the Occupational Safety and Health Act, and prohibits removable noise attenuations.

Proposed new §217.333, Confined Spaces, requires that the design of collection systems and treatment facilities minimize the use of confined spaces as defined in 29 CFR §1910.146. Con-

fined spaces present an inherent danger to personnel required to work in them.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules provide new minimum requirements for domestic wastewater treatment facilities and domestic wastewater collection systems. The rules are proposed in order to bring the standards and criteria for wastewater collection systems and treatment facilities up-to-date with current engineering practices and technology, and to better reflect the current permitting practices of the commission.

Any governmental entity that plans to modify or build a new wastewater collection system or treatment facility will be affected by this rule. Municipalities, municipal utility districts, and school districts are most frequently the types of entities that build wastewater collection systems and treatment facilities. The proposed rules would also apply to state agencies such as the Department of Criminal Justice, Parks and Wildlife Department, Texas Department of Transportation, Texas Youth Commission, as well as institutions of higher education.

At this time, there are approximately 2,521 domestic wastewater treatment facilities permitted in the state. Of those, 1,746 facilities are publicly owned. There are governmental entities that own collection systems that empty into privately owned treatment facilities. Since collection systems are not permitted, no data exists for governmental entities that own collection systems.

The following items are the more significant aspects of the proposed rules and would impact domestic wastewater treatment facilities.

Larger manhole openings

The proposed rule requires manhole openings with a minimum diameter of 30 inches. Larger manhole openings require a larger ring and cover. None of the other manhole structures are affected by the new requirement. The cost for a larger ring and cover is $50 to $60. The cost for a typical manhole is $30,000 to $50,000, depending on equipment and location. Therefore the added cost of the larger ring and cover is not expected to be significant. All major cities in the state, with the exception of San Antonio, are already requiring the new larger manhole openings.

Emergency power

The proposed rules will require all lift stations to be wired with generator connections. It is estimated that for a typical lift station, the additional wiring will cost approximately $500 to $1,000. Only essential wastewater treatment equipment must be wired for emergency power. Each owner is given the latitude to determine which treatment units are essential for a particular treatment facility. Additional cost for wiring a treatment unit should be similar to the costs for a lift station. This expense is necessary to ensure the operation of a collection system and essential treatment units in the event of a wide-spread power outage.

Color coding of pipe

The proposed rules will require the color coding of pipe. Most wastewater treatment facilities currently color-code facility pipes. The proposed rule would standardize the colors across the state. There would be less likelihood of an environmental incident when engineers and operators change treatment facilities if the pipe coding is standardized.

Safety audit

The proposed rules will require a safety audit in order to address safety issues in the facility or system design. Agency staff does not anticipate an owner having to hire a safety specialist to perform the audit. The design engineer, with the cooperation of the owner and the operational staff, would be able to perform the safety audit to the level required by the proposed rule and without significant additional cost.

In general, the proposed rules are not expected to result in significant fiscal implications for local governments. For each more stringent requirement in the proposed rule, there are options and the opportunity for approval of variances that would eliminate any extra cost. In addition, the proposed rules are anticipated to result in clearer, more up-to-date criteria to use in developing wastewater collection system and wastewater treatment facility projects. Plans and specification approval process time should be shortened, which could translate into cost savings. The proposed rules are expected to provide more flexibility and more choice in design options. With more flexibility in the requirements, collection system and treatment facility owners can tailor the system or facility design to meet the needs of their community and geographic location. While more flexibility in design options may or may not result in initial savings, a collection system or treatment facility that is a better fit for the community and location it serves should save money over the life of the system. These savings would result from easier operations, less maintenance, and a longer life span of the system or facility.

Finally, the proposed rules provide a procedure for requesting a variance from rule requirements. Formerly, there was an informal procedure, but the new criteria will standardize the procedures and applies timeframes for the executive director's response and the owner's reply for more information.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be updated design criteria which reflect current engineering practices and technology, while providing more options for the design of wastewater treatment facilities and collection systems.

No significant fiscal implications are anticipated for businesses or individuals as a result of the proposed rules for the first five years the rules are in effect.

At this time, there are an estimated 775 municipal permits for wastewater treatment facilities held by private entities in the state. There is no data for the number of collection systems owned by private entities. Any private entity that proposes to modify or build a new collection system or treatment facility would be affected by this proposed rule.

The effect on businesses will be the same as it is on governmental entities. Privately owned municipal wastewater treatment facilities would be affected by the proposed requirements for larger manhole covers, requirements for lift stations to be wired with generator connections for emergency power, the standardization of color coding for pipes, and the safety audit requirements. The costs associated with designing and building wastewater treatment facilities are dependent upon the design options chosen.

With the increased number of options for wastewater treatment allowed in the proposed requirements, projects could be more or less expensive than those designed under the current regulations.

Costs for wastewater service to individuals are not expected to increase due to this proposed rule. The rulemaking will bring the regulations into line with current technology and offer wastewater service providers greater latitude in the design of their collection systems and treatment facilities. Although there may be some cost increases due to more stringent requirements, such as larger manhole openings and emergency power availability, those increases may be offset with newer, less expensive alternatives elsewhere in the design. In many instances, higher initial costs related to construction and equipment result in long-term savings in operational and maintenance costs and life expectancy of the system or facility.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

In general, no adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. At this time, there are approximately 140 small investor owned sewer utilities in Texas. Any of these utilities that plan to modify or to build a new collection system or treatment facility would be affected by the proposed rule. Existing systems and facilities that are not modified will not be affected by the proposed rule.

Small treatment facilities may see a greater impact from the new design criteria than larger facilities. Because of advancing technology and engineering practices, larger facilities have long been designed with standards higher than current rules require. Smaller facilities, especially those known as package plants (wastewater treatment equipment that is assembled off-site and delivered as a complete "package"), will have to alter the designs for aeration basins and clarifiers.

Aeration basins and clarifiers are required to be deeper in the new rules, but aeration basins are designed on the volume of wastewater they are required to process. A deeper sidewall depth will reduce the other dimensions (width and/or length) proportionately. Although there will be an initial cost for package plant manufacturers to retool their designs for aeration basins, the material and construction costs are not expected to change appreciably.

Clarifiers are designed on a surface loading basis; therefore, an increased sidewall depth requirement would increase the cost of a clarifier. More material (either concrete or steel) would be required to build a deeper clarifier. There would also be an increase in the cost of excavation due to the deeper hole required. The capital cost increase should be off-set, at least partially, by avoiding non-compliance with permitted effluent limitations, more efficient settling of solids, and less operator time spent dealing with an improperly operating unit. The initial cost of the clarifier is estimated to increase an average ten percent. Operational cost will not change. Most small facility designs include a clarifier, but there are plans that use other treatment units such as membrane bioreactor systems.

Entities that purchase package plants may see a temporary spike in overall costs due to the manufacturers' need to retool their manufacturing facilities. The spike should diminish as package plant manufacturers adjust their production equipment to meet the new regulations. The price will still include the increased cost of the deeper clarifier if a clarifier is included in the design.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

At this time, there are approximately 140 small investor owned sewer utilities in Texas. The rules are proposed in order to bring the standards and criteria for wastewater collection systems and treatment facilities up-to-date with current engineering practices and technology, and to better reflect the current permitting practices of the commission. An exemption from all or part of the rules would potentially violate the Texas Water Code. Any applicant, including small and micro-businesses, may ask for variances from specific design criteria in the rule if they can demonstrate that the requested change will be at least as protective of human health and the environment as the rule requirement.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this proposal is to update the design standards and criteria for wastewater treatment systems to current engineering practices and include recent advances in wastewater treatment technologies. Additionally, the proposed rules will allow increased flexibility to attain the design standards and criteria; update the standards and criteria reflect the commission's related permitting practices; and amend and specify the commission's review and approval process for proposed wastewater treatment facility projects. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Specifically, the proposed rule does not exceed a federal standard because no applicable federal standards exist. The proposed rule does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The proposed rule was not developed solely under the general powers of the agency; but also under the specific authority of Texas Water Code, §26.034. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The spe-

cific purpose of the rulemaking is to update the design standards and criteria for wastewater treatment systems to current engineering practices and include recent advances in wastewater treatment technologies. Additionally the proposed rules will allow increased flexibility to attain the design standards and criteria; update the standards and criteria reflect the commission's related permitting practices; and amend and specify the commission's review and approval process for proposed wastewater treatment facility projects. Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking. The commission invites public comment regarding this draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et.seq*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a preliminary consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule are: to protect; preserve; restore; and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and, to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the proposed rule include the standards for the discharge of municipal and industrial wastewater to coastal waters in 31 TAC §501.14(f) and standards for development in critical areas in 31 TAC §501.14(h).

The rules are consistent with the goals and policies of the Coastal Management Program because, even though these rules do not directly govern wastewater discharge permits but rather set the minimum criteria for designing wastewater treatment facilities, the rules are written to support the commission's rules that do govern wastewater discharge permits. Additionally, these rules are as stringent as the existing design criteria; therefore, there will be no reduction in the quality of the effluent reaching the receiving waters.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any Coastal Natural Resource Areas, and because the proposed rules do not reduce the quality of the effluent reaching the receiving waters.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin April 10, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, Texas Register Team, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-044-217-PR. The comment period closes April 14, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Sherry Smith, Rule Project Manager, Water Quality Division, (512) 239-0571 or Louis C. Herrin, III, P.E., Rule Technical Manager, Water Quality Division, (512) 239-4552.

SUBCHAPTER A. ADMINISTRATIVE REQUIREMENTS

30 TAC §§217.1 - 217.17

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed rules implement TWC, §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.1. Applicability.

(a) This chapter applies to any person who proposes to construct, renovate, or re-rate a wastewater collection system or commission permitted wastewater treatment facility that will collect, transport, treat, or dispose of wastewater that retains the characteristics of domes-

tic wastewater although it may contain industrial wastewater, except those systems regulated by Chapter 285 of this title (relating to On-Site Sewage Facilities).

(b) This chapter does not apply to a person who proposes to construct a collection system or commission permitted treatment facility that will collect, transport, treat, or dispose of wastewater that does not have the characteristics of domestic wastewater although it may contain domestic wastewater.

(c) The executive director will grant variances from the requirements of this chapter to a person who proposes to construct, modify, upgrade, or re-rate a collection system or treatment facility, if the plans and specifications for the project meet the design criteria, are protective of human health and the environment, and are submitted within 180 days after the effective date of this chapter.

§217.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Advanced nutrient removal--A process to remove phosphorus and/or nitrogen and produce effluent of higher quality than normally achieved by secondary treatment processes.

(2) Alternative collection system--A system or combination of systems that collects wastewater and incorporates any of the following: pressure sewer, small diameter gravity sewer, or vacuum sewer that is not a conventional gravity collection system. An alternative collection system is comprised of both on-site and off-site components.

(3) Annual average flow--The arithmetic average of all daily flow determinations taken within a period of 12 consecutive months.

(4) Biotower--A biological filtration system that involves biological film on a plastic media that reduces the biological oxygen demand of the effluent.

(5) Building lateral--A pipe that conveys raw wastewater and connects the plumbing of a structure to an on-site component. A building lateral is not a part of an alternative wastewater collection system.

(6) Bypass--The intentional diversion of a waste stream from any portion of a treatment facility.

(7) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport wastewater.

(8) Constructed Wetland--A water treatment facility built to duplicate the processes occurring in natural wetlands, which are complex, integrated systems in which water, plants, animals, microorganisms and the environment (sun, soil, and air) interact to improve water quality.

(9) Design flow--The average daily flow rate for a treatment facility permitted by the commission.

(10) Diurnal Flow--The daily cycle of high and low influent flows to a wastewater treatment system.

(11) Domestic Wastewater--Sewage that is characterized as residential wastewater, not produced by commercial or industrial activity, and which originates primarily from kitchen, bathroom, and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers, and sinks of a residential dwelling.

(12) Effective size--If a sample of filter media is examined and the grain size plotted as a semi-log grain size curve with the ordinates representing the percent (P), by weight, of grains is smaller than the size denoted by the abscissa, then the effective size of the sample is the diameter, D10, that corresponds to P = 10%. In other words, 10% of the sample particles are finer and 90% are larger than the effective size.

(13) Engineer--A professional engineer with expertise in wastewater design and construction licensed by the Texas Board of Professional Engineers.

(14) Equivalent dwelling unit--Any building or section of a building that produces wastewater of a composition and quantity comparable to that discharged by a single, private residence.

(15) Facility--All land, structures, operational units, or appurtenances used jointly to process, treat, and dispose of wastewater.

(16) Filter media--The material placed in a filter containment structure to perform the filtering action.

(17) Firm pumping capacity--The maximum flowrate under design conditions with the largest pumping unit out of service.

(18) Flat plate system--A membrane bioreactor that arranges membranes into rectangular cartridges with a porous backing material sandwiched between two membranes for structural support.

(19) Force main--A pressure-rated conduit that conveys wastewater from a pump station to a discharge point.

(20) Free water system--A constructed wetlands designed to have the water surface above the wetland bed or substrate.

(21) Grinder pump--A component that receives raw wastewater through a building lateral, grinds the solids in the wastewater into a slurry, and provides the motive force for transporting the raw wastewater to a lift station or the terminus of a collection system.

(22) Gross flux rate--The volume of water that passes through a membrane measured in gallons per day per square-foot of membrane area at a standard temperature of 20 degrees Centigrade.

(23) Headworks--The location where wastewater enters a facility and the first chance to treat the flow, typically by removing large solids and grit.

(24) Hollow fiber system--A membrane bioreactor composed of bundles of very fine membrane fibers, approximately 0.5 - 2 millimeter diameter, held in place at the ends with hardened plastic potting material, and supported on stainless steel frames or rack assemblies. The outer surface of each fiber is exposed to the mixed liquor with filtrate flow from outside to inside through membrane pores.

(25) Innovative technology--A process not addressed in this chapter or a process specifically identified as innovative by this chapter.

(26) Interceptor tank--A component that receives raw wastewater from a building lateral, removes floatable and settleable solids, stores the removed solids, and provides flow attenuation.

(27) Lift station--A belowground structure that collects wastewater and utilizes pumps to raise it to a higher elevation. The term lift station applies to a structure in which the static head exceeds the frictional headlosses.

(28) Membrane bioreactor system--An activated sludge biological treatment system that uses membrane filtration rather than secondary clarification for solids separation and conventional filtration.

(29) Minimum grade effluent sewer--A wastewater collection pipeline with a constant downward slope.

(30) Multiple equivalent dwelling unit is:

(A) a group of residences served by a common service connection; or

(B) a commercial, industrial, institutional, or other nonresidential establishment that produces wastewater:

(i) in excess of 1,500 gallons per day; or

(ii) not comparable in composition to that discharged by a single private residence.

(31) Net flux rate--The gross flux rate adjusted for production lost during backwash, relaxation, and cleaning.

(32) Nonconforming technology--Technology or a process that does not conform to the design criteria of this chapter or a technology or process specifically identified as nonconforming by this chapter.

(33) Off-site component--A wastewater collection system component that includes collection system pipes, force mains, pump stations, lift stations, vacuum stations, and related appurtenances located outside a wastewater treatment facility's site boundary.

(34) On-site component--Equipment, structure, or pipe located within a wastewater treatment facility's site boundary.

(35) Overflow--A flow over the weir of a treatment unit.

(36) Owner--A person who owns a collection system or a treatment facility or part of a system or facility.

(37) Peak flow--The highest two-hour flow expected under any operational conditions, including times of high rainfall based on a two-year 24-hour storm or a prolonged period of wet weather.

(38) Pressure sewer--A wastewater collection system that is pressurized by pumps at each service connection.

(39) Project--A TCEQ permitted wastewater treatment facility on which construction has begun but that is not yet complete.

(40) Proposed facility--A TCEQ permitted wastewater treatment facility on which construction has not begun.

(41) Pump--A device that raises, transfers, or compresses fluids by suction, pressure, or both.

(42) Report--The final engineering design report prepared, signed, sealed by the design engineer that contains calculations and written descriptions of processes, equipment, and structures that demonstrate compliance with this chapter, as described in §217.10 of this title (relating to Final Engineering Design and Report).

(43) Sequencing Batch Reactor (SBR)--A fill and draw activated sludge treatment system that is identical to conventional activated sludge systems, except the processes are carried out sequentially in the same tank. An SBR system has the following five steps that are carried out in the following sequence:

(A) Fill--The basin is filled with the influent;

(B) React--The influent in the basin is aerated;

(C) Settle--The mixed liquor within the basin is settled (clarification);

(D) Draw--The basin is decanted; and

(E) Idle--The sludge is removed from the basin.

(44) Small diameter effluent sewer--A collection system that receives effluent from an interceptor tank, transports the flow by gravity, and may include minimum grade effluent sewers and variable grade effluent sewers.

(45) Transmembrane pressure--The difference between the average pressure on the feed side of a membrane and the average pressure on the permeate side of a membrane or the driving force associated with any given flux rate.

(46) Tubular system--A system in which sludge is pumped from an aeration basin to a pressure driven membrane system outside of a bioreactor where the suspended solids are retained and recycled back into the bioreactor while the effluent passes through a membrane.

(47) Variable grade effluent sewer--A small diameter gravity wastewater collection system that does not require a uniform gradient, but will allow inflective gradients where sections of the collection system are below the hydraulic grade line. May be used with septic tank effluent pumps.

(48) Variance--A deviation from a specific requirement of this chapter.

(49) Wastewater--A waterborne industrial waste, recreational waste, domestic waste, or combination of these wastes.

(50) Wasting--The practice of removing excess or old sludge from a wastewater treatment process.

§217.3. Purpose.

(a) The purpose of this chapter is to establish the minimum design criteria for the comprehensive design of domestic sewage collection, treatment, and disposal systems. The minimum design criteria are not sufficient for all situations. A design must protect the public health and meet water quality standards established by the commission.

(b) The executive director may require more stringent design criteria of a facility if the executive director determines it to be necessary to protect public health or to meet water quality standards established by the commission.

§217.4. Variances.

(a) The report must include all requested variances from the requirements of this chapter.

(b) The report must include a technical justification for each variance requested.

(c) If the executive director determines that a variance may potentially endanger public health or the environment, the executive director may deny the variance or require compensatory measures be taken.

(d) The executive director shall not grant or approve a variance that would violate any expressed prohibition in this chapter.

(e) If the executive director does not notify an owner by facsimile or letter that additional information is requested or that a variance is denied within thirty days after receiving a signed and dated variance request that has been sealed by an engineer, the variance is approved.

(f) A variance request from any rule in this chapter that requires affirmative executive director approval is not eligible for the approval process in subsection (e) of this section.

§217.5. Plans and Specifications General Requirements.

(a) An owner is required to build a wastewater collection system or treatment facility according to the plans and specifications approved by the executive director.

(b) The executive director's approval of plans and specifications does not relieve an owner of the responsibility to obtain a wastewater permit or other authorization in accordance with Texas Water Code, Chapter 26.

(c) The executive director's approval of a wastewater permit does not relieve an owner of the responsibility to obtain a plans and specifications approval in accordance with this chapter.

(d) An owner must ensure that its facility plans and specifications meet all design requirements in the associated wastewater permit.

§217.6. Submittal Requirements and Review Process.

(a) An owner is not required to submit plans and specifications for approval prior to the commission issuing the facility's wastewater permit.

(b) The facility's plans and specifications must be based on a design that will produce effluent that will at least meet the requirements and effluent limits in the associated wastewater permit.

(c) An owner shall submit to the executive director and the appropriate regional office a summary transmittal letter that includes the following requirements, except as provided by §217.8 of this title (relating to Municipality Reviews):

(1) the name and address of the design firm;

(2) the name, phone number, and facsimile number of the design engineer;

(3) the county(s) where the project will be located;

(4) an identifying name for the project;

(5) the name(s) of the person(s) that proposes to operate the facility;

(6) the owner's name, permit number, and facility name;

(7) a statement certifying that the plans and specifications are in substantial compliance with all requirements of this chapter, with the exception of any listed variance requests;

(8) a statement certifying that any variances from the requirements will not threaten public health or environment, based on the best professional judgment of the engineer who prepared the report and the project plans and specifications;

(9) a brief description of the project scope that includes:

(A) a brief engineering summary of the facility;

(B) a description of variances from the requirements of this chapter, including the use of nonconforming or innovative technology; and

(C) an explanation of the reasons for such variances in accordance with §217.4 of this title (relating to Variances); and

(10) the signature and seal of the engineer responsible for the design of the facility.

(d) The executive director may review the plans and specifications for any facility.

(e) If the executive director does not notify an owner within 30 days after the receipt of a summary transmittal letter that a review will occur, the project is approved. However, such approval is conditional subject to an executive director determination under §217.4(c) or (d) of this title. Additionally, if this provision conflicts with any other rule in this chapter that requires affirmative executive director approval, then this provision does not apply.

(f) If the executive director notifies an owner of the intent to review a facility's design, the owner shall submit the following within 30 days:

(1) a complete set of plans and specifications;

(2) a complete report;

(3) any requested variances; and

(4) sufficient information to satisfy the executive director that a project is in substantial compliance with this chapter.

§217.7. Types of Plans and Specifications Approvals.

(a) Approval given by the executive director or other authorized review authority does not relieve an owner of any liability or responsibility with respect to designing, constructing, or operating a system or facility in accordance with applicable commission rules and the associated wastewater permit.

(b) The executive director or other authorized review authority may grant the following types of approvals:

(1) Standard approval. The executive director may grant a standard approval for plans and specifications that do not include any requested variances and comply with all applicable parts of this chapter.

(2) Approval of innovative and nonconforming technologies.

(A) An owner who requests approval for an innovative or nonconforming technology must submit a summary transmittal letter in accordance with §217.6(a) of this title (relating to Submittal Requirements and Review Process) and must describe the technology and give the reason(s) for selecting the engineering proposal for a process, equipment, and construction material.

(B) An owner must receive written approval from the executive director before constructing, installing, or operating any innovative or nonconforming technology.

(C) The executive director may require a request to use a nonconforming or innovative technology to be supported by a pilot or demonstration study. Performance data from a similarly designed full-scale process that has operated for a reasonable period under conditions similar to those of a proposed design may be submitted in addition to or in lieu of pilot or demonstration study.

(D) The executive director may require an owner to submit evidence that the owner, the manufacturer, or the supplier of the nonconforming equipment has provided a performance bond that:

(i) is acceptable to the executive director;

(ii) is from a surety company listed on the United States Treasury Department's current *Listing of Certified Companies*; and

(iii) insures the performance of the innovative or nonconforming equipment or process.

(E) The performance bond must cover:

(i) the full cost of removing equipment and closing the facility;

(ii) the replacement of all failing processes and equipment with corresponding processes and equipment that conforms to these rules;

(iii) all associated engineering costs necessary for the removal and replacement of any failing process or equipment; and

(iv) at least two years from the date the facility or equipment is put into service.

(F) The executive director may require an owner to submit a separate report on the performance of a nonconforming or innovative technology after a facility is built and operating.

(3) Conditional approval.

(A) The executive director may grant conditional approval for a specific set operating conditions.

(B) If a conditional approval is granted, an owner is responsible for ensuring that the conditions, stipulations, and restrictions outlined by the executive director are met. Operating outside the conditions, stipulations, or restrictions in a conditional approval is a violation of this section.

§217.8. Municipality Reviews.

(a) The executive may grant approval authority to a municipality that request approval authority and meets the requirements in Texas Water Code, §26.034(d).

(b) The executive director may not require plans and specifications for a wastewater collection system that transports primarily domestic waste to be submitted for approval from:

(1) a municipality, if the plans and specifications subject to review are prepared by a private engineering consultant and a review is conducted by an engineer who is an employee of or consultant to the municipality separate from the private engineering consultant charged with the design of the plans and specifications under review; or

(2) an entity that is required by local ordinance to submit the plans and specifications to a municipality for review and approval.

(c) If a municipality seeks to perform technical reviews of wastewater collection systems, the municipality shall submit a map or maps to the executive director delineating the municipality's jurisdictional boundaries for the area it is seeking responsibility for review of plans and specifications at least 30 days before commencing to review plans and specifications in accordance with subsection (b) of this section.

(d) The municipality shall submit a revised map or maps to the executive director identifying jurisdictional boundary changes at least 30 days prior to any proposed change.

(e) If a municipality ends its review authority, the municipality shall provide written notice to the executive director at least 30 days prior to ending municipal reviews.

(f) A municipality's review program must incorporate the following requirements:

(1) The municipality's review and approval process shall ensure compliance with all the applicable rules of this chapter.

(2) A municipality may review and approve engineering reports and plans and specifications only for projects that transport primarily domestic waste within the boundaries of jurisdiction of that municipality.

(3) The municipality shall issue a document that approves and details each project approved for construction.

(4) The municipality shall maintain complete files of all review and approval activities.

(g) The executive director may perform periodic audits of the review and approval process of a municipality with review authority to ensure that the review process and approved projects comply with this chapter.

(1) The executive director shall provide a municipality with written notice of a pending audit a minimum of five working days prior to beginning review of municipal files related to an audit.

(2) The municipality shall provide to the executive director an opportunity to review any existing project files relating to its review and approval activities under this chapter.

(3) The municipality shall provide to the executive director an opportunity to review documentation of all agreements between a private consultant or consultants and the municipality that relate to its review and approval activities under this chapter.

(h) If the executive director finds through review of specific projects or through audit of a municipality's review and approval process that a municipality's review and approval process does not provide for compliance with the minimum design and installation requirements detailed in this chapter, the municipality must achieve compliance within a time frame established by the executive director.

(i) If the municipality does not achieve the required compliance within the timeframe established by the executive director, the commission may revoke the review authority of a municipality and require that all plans and specifications reviewed by the municipality under these rules be submitted to the executive director for review and approval.

(j) The executive director shall notify a municipality in writing of the intention to revoke the municipality's authority and shall include a justification for revoking the authority.

(k) If the authority of a municipality is revoked, all new projects proposed to be constructed within that municipality's jurisdiction must be submitted to the executive director in accordance with §217.6(a) of this title (relating to Submittal Requirements and Review Process).

(l) If the authority of a municipality is revoked, the municipality shall return all subsequently submitted plans and specification projects in its jurisdiction and notify any applicants of the requirement to seek approval from the commission.

§217.9. Texas Water Development Board Reviews.

If the Texas Water Development Board reviews plans and specifications for a wastewater collection, treatment, or disposal system in accordance with Texas Water Code, §17.276(d), the owner shall send a copy of the approval to the executive director.

§217.10. Final Engineering Design Report.

(a) An owner shall submit the report for any proposed facility or proposed modification or expansion to an existing facility.

(b) The report must include the signed and dated seal of the engineer responsible for the report.

(c) The report must demonstrate compliance with this chapter or justify variances from this chapter in accordance with §217.4 of this title (relating to Variances) by including all pertinent calculations, analyses, graphs, formulas, constants, tables, geologic information, hydraulic and hydrological information, historical data, and technical assumptions.

(d) If the executive director requests additional information for the report, an owner shall submit the requested information prepared, signed, and sealed by an engineer, within 30 days after receiving a request.

(e) The report for a wastewater collection system must include the following:

(1) a map showing the current service area, the proposed service area, and any area proposed for future expansion;

(2) the topographical features of the current, the proposed, and any future service areas;

(3) a description of how the design flow was determined;

(4) the minimum and maximum grades for each size and type of pipe;

(5) calculations of expected minimum and maximum velocities in the system for each size and type of pipe;

(6) the proposed system's effect on an associated existing system's capacity;

(7) the existing and anticipated inflow and infiltration, the hydraulic effect of the inflow and infiltration on the proposed and existing systems, any inflow and infiltration flow rate monitoring, and any inflow and infiltration abatement measures;

(8) a description of the ability of the existing and proposed trunk and interceptor wastewater collection systems and lift stations to handle the peak flow;

(9) the capability of the receiving treatment facility to receive and adequately treat the anticipated peak flow;

(10) an engineering analysis showing compliance with structural design, minimization of odor-causing conditions, and the pipe design requirements of §217.55 of this title (relating to Manholes and Related Structures);

(11) a description of the areas not initially served by a project, and the projected means of providing service to these areas, including special provisions incorporated in the present plans for future expansion;

(12) the calculations and curves showing the operating characteristics of all system lift stations at minimum, maximum, and design flows during both present and future conditions; and

(13) the safety considerations incorporated into a project design, including ventilation, entrances, working areas, and explosion prevention.

(f) The report for a wastewater treatment facility must include the following:

(1) The quantity and characteristics of any existing wastewater influent, any proposed changes, and any anticipated changes.

(2) If adequate records are not available, analyses must be made of the existing conditions, and the results included in the report, including:

(A) a map of the proposed facility and the area surrounding the facility, the area included in the facility site, the area that makes up the buffer zone, any 100-year flood event floodway or floodplain, and the discharge route or land application unit;

(B) a description of the surrounding area that includes prevailing winds, water treatment facilities, water supply wells, surface water intakes, present and proposed housing developments, present and proposed industrial sites, present and proposed highways and streets, present and proposed parks, present and proposed schools, present and proposed recreational areas, and present and proposed shopping centers;

(C) documentation of compliance with the buffer zone criteria and the 100-year floodplain restrictions specified in §309.13 of this title (relating to Unsuitable Site Characteristics);

(D) a sludge management plan, including:

(i) the estimated quantity and quality of sludge that will be generated, including future sludge loads based on flow projections;

(ii) the sludge treatment requirements for ultimate disposal, and the sludge storage requirements for each alternative;

(iii) a method of sludge transport, use, storage, and disposal; and

(iv) the alternatives, contingencies, and mitigation plans that ensure reliable capacity and operational flexibility.

(E) The methods to control bypassing, including:

(i) information and data describing features to prevent bypassing such as auxiliary power, standby and duplicate units, holding tanks, storm water clarifiers, or flow equalization basins; and

(ii) operational arrangements such as flexibility of pipes and valves to control flow through the treatment units and reliability of power sources to prevent unauthorized discharges of untreated or partially treated wastewater.

(F) information and calculations demonstrating the facility's compliance with the design requirements of this chapter, including:

(i) the types of units proposed and their capacities;

(ii) the detention times, surface loadings, and weir loadings pertinent to each wastewater treatment unit; and

(iii) hydraulic profiles for wastewater and sewage sludge that include:

(I) a plot of the hydraulic gradient at peak flow conditions for all gravity lines;

(II) the anticipated operation mode of the facility;

(III) organic and volumetric loadings pertinent to each unit; and

(IV) aeration demands and how those demands will be supplied.

§217.11. Construction of an Approved Facility.

(a) An owner may not begin construction of a facility with approved plans and specifications until the executive director issues a wastewater permit for the facility, unless the commission issues the owner an authorization to construct under Texas Water Code, §26.027(c).

(b) An owner must obtain a plans and specifications approval of a particular permit phase before beginning to construct or operate under that permit phase.

(c) An owner must phase the construction of a facility as required by the associated wastewater permit, unless a variance is granted under §217.4 of this title (relating to Variances).

(d) A person is prohibited from allowing a bypass of untreated or partially treated wastewater during construction without a commission order for such discharge.

(e) An owner that substantially modifies an existing facility or builds a new facility must comply with the requirements of this chapter that are in effect on the date the plans and specifications are submitted for approval.

(f) A facility owner that must apply for a new permit or that never received a plans and specifications approval for an existing facility must comply with the requirements of this chapter that are in effect at the time the new permit application is submitted or the lack of plans and specifications approval is discovered.

(g) A collection system owner that never received a plans and specifications approval for an existing collection system must meet the design criteria in effect at the time the lack of the plans and specifications approval is discovered.

§217.12. Substantial Design Changes.

(a) A substantial design change is a change to the approved plans and specifications or an approved variance of a process, equipment, or design that has the potential to alter the way a wastewater facility or system functions.

(b) A substantial design change request must include the signed and dated seal of an engineer.

(c) If the executive director determines that a substantial design change may potentially endanger public health or environment, the executive director may deny the design change or require compensatory measures to be taken.

(d) The executive director shall not grant or approve a substantial design change that would violate any expressed prohibition in this chapter.

(e) If the executive director does not notify an owner by fax or letter that additional information is requested or that a substantial design change is denied within thirty days after receiving a signed and dated substantial design change request that has been sealed by an engineer, the substantial design change is approved. However, such approval is conditional subject to an executive director determination under subsection (c) or (d) of this section. Additionally, if this provision conflicts with any other rule in this chapter that requires affirmative executive director approval, then this provision does not apply.

(f) A substantial design change must be approved by the executive director before it can be built, installed, or put into service.

§217.13. Final Construction Drawings and Technical Specifications.

(a) If requested by the executive director, an owner shall submit construction drawings and technical specifications for a constructed system or facility within 30 days after receiving the request.

(b) The signed and dated seal of the engineer who is responsible for the facility design must be on each sheet of the construction drawings and on the title page of the bound technical specifications.

(c) The final construction drawings and technical specifications must include all items in the following paragraphs that are applicable to a project.

(1) Construction drawings for a wastewater collection system.

(A) The drawings for a wastewater collection system must include plan and profile drawings for both gravity pipes and pressure pipes, and the drawings must specify the size, grade, and type of pipe materials.

(B) The drawings must also specify the location of any structural features of a collection system, including manholes, waterway crossings, bridge crossings, siphons, lift stations, and air release valves.

(C) The drawings must locate all potable water distribution lines that are 9.0 feet or closer to any portion of a wastewater collection system and indicate the actual separation distances.

(D) The drawings must include dimensional section details of manholes, manhole covers, and any other collection pipe appurtenances.

(E) The drawings for a lift station must show the location of the following:

(i) all pumps, valves, pumping control equipment, safety equipment, and ventilation equipment;

(ii) points that may be accessed by operational staff, such as manholes and cleanout ports;

(iii) hatches and hoisting equipment for installing and removing equipment;

(iv) slope and location of any wet well, floor grouting, valve vaults, valve vault pipes, and gas migration prevention measures used between a wet well and a valve vault;

(v) pipe entrances and exits;

(vi) sump pumps;

(vii) elevations of level control switches; and

(viii) any other lift station-related appurtenances.

(2) Construction Drawings for a Wastewater Treatment Facility.

(A) The drawings for a wastewater treatment facility show a vertical and horizontal scale and must include:

(i) plan drawings of all pipes;

(ii) plan and profile drawings of each treatment unit;

(iii) the dimensions of each wastewater treatment unit;

(iv) all mechanical, electrical, and construction details; and

(v) a hydraulic profile of a treatment facility at both design and peak flows.

(B) The construction drawings may include plans for future expansion of a facility.

(C) The construction drawings may include a clarification of any complex details of pipe systems by including an isometric flow diagram.

(3) The specifications for a modification of an existing collection system or treatment facility must include technical descriptions of all equipment including:

(A) the quantity and sizes of any equipment;

(B) any applicable materials specifications;

(C) testing requirements; and

(D) national standards citations.

(4) If requested by the executive director, an owner must submit additional information relating to the plans and specifications within 30 days after the date of a request.

§217.14. Completion Notice.

(a) Upon completion of the construction of a collection system or treatment facility, an owner shall provide a completion notice to the executive director that:

(1) is signed, sealed, and dated by an engineer;

(2) certifies that the completed work substantially complies with this chapter, the approved plans and specifications, any approved variances, any approved substantial design changes, and the associated wastewater permit; and

(3) states that an operation and maintenance manual, as required in §217.16 of this title (relating to Treatment Facility Operation and Maintenance Manual), has been prepared and a copy is located at the facility.

(b) An owner shall disclose in a completion notice any deviation from the approved plans and specifications that is incorporated into a project after construction began or from an approved substantial design change. An owner shall certify that, based on the best professional judgment of an engineer, the change that was not submitted for approval will not result in substantial design change, as defined in §217.12(a) of this title (relating to Substantial Design Changes).

§217.15. Inspection.

The executive director may inspect a project at any time during any phase of the project to determine compliance with the project plans and specifications, the report, any variance approval, any substantial change approval, an associated permit, or the requirements of this chapter.

§217.16. Treatment Facility Operation and Maintenance Manual.

(a) An owner is responsible for developing an operation and maintenance manual with the assistance of an engineer.

(b) An owner must ensure that the operation and maintenance manual includes all information specific to the facility that is necessary to ensure efficient and safe operation, maintenance, monitoring, and reporting by a facility operator. The operation and maintenance manual must include the following items:

(1) administrative and recordkeeping items, including:

(A) a table of contents;

(B) a copy of the wastewater permit;

(C) names and telephone numbers for contacts with the appropriate state and federal regulatory agencies;

(D) a sample of each type of Discharge Monitoring Report or Monthly Effluent Report an owner is required to submit for the facility;

(E) a sample daily activity report for documenting internal monitoring done in association with internal process control, including flow rates from various units, dissolved oxygen levels, pH, solids concentrations, sludge settling, clarifier sludge blanket depths, sludge age or retention time, and disinfection residuals; and

(F) a description of the quality assurance and quality control recordkeeping requirements for all laboratory analyses performed.

(2) operation and maintenance items, including:

(A) expected flow patterns, size, and capacity of all units within the facility;

(B) start-up procedures, routine operational procedures, emergency operations procedures, and shut down procedures for all units;

(C) the manner and expected volumes in which solids return to aeration or waste;

(D) expected solids concentrations in each unit;

(E) expected clarifier overflow rates;

(F) expected disinfectant and dechlorination usage and dosage amounts during normal and emergency operating conditions;

(G) descriptions and frequencies of routine in-situ and laboratory analyses to be performed and a list of references to standard testing procedures literature;

(H) description and schedule of routine maintenance activities to be performed, including lubrication and inspection of all pumps, motors, and other equipment; and

(I) a recommended spare parts inventory with source information.

(3) safety requirements, including:

(A) all known potential or actual safety hazards within a facility;

(B) the location and method of use for all personal safety equipment;

(C) evacuation plans;

(D) the names and phone numbers of entities and individuals to be contacted during emergencies;

(E) emergency operation plans for power outages, flooding, and other site specific emergency situations that may develop; and

(F) annual safety training curriculum and schedule for all facility staff.

(c) An owner shall keep a copy of a current operation and maintenance manual at the facility site.

(d) An owner shall submit a copy of the operation and maintenance manual to the executive director within 30 days after receiving a request.

§217.17. Collection System Records.

An owner of a collection system shall maintain and make available to the executive director upon request the following:

(1) a complete set of the final plans and specifications with engineer's certification;

(2) a copy of the complete report;

(3) all change orders and test results;

(4) a copy of the summary transmittal letter submitted to the executive director; and

(5) any approvals for variances or substantial changes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER B. TREATMENT FACILITY DESIGN REQUIREMENTS

30 TAC §§217.31 - 217.39

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC, §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.31. Applicability.

This subchapter details the design values that an owner shall use when determining the size of any wastewater treatment facility component. This subchapter applies to the treatment design for a new facility, upgrade of an existing facility, and the re-rating of an existing facility.

§217.32. Organic Loadings and Flows.

(a) The design of a new facility must be based on the flows and loadings in paragraphs (1) - (3) of this subsection, unless subsection (b) of this section applies.

(1) Design flow.

(A) For a facility equal to or greater than 1.0 million gallons per day (mgd), the permitted flow is the average annual flow value determined by multiplying the per capita flow in Table B.1 in paragraph (3) of this subsection by the number of people in the service area.

(B) For a facility less than 1.0 mgd, the permitted flow is the maximum 30-day average flow estimated by multiplying the average annual flow by a factor of at least 1.5.

(2) Peak flow. When site-specific data is unavailable, the instantaneous two-hour peak flow must be estimated by multiplying the permitted flow by a factor of 4.0.

(A) If a facility experiences unusual diurnal or seasonal flow variations, a higher multiplier may be used to calculate the peak flow.

(B) In a facility with flow equalization, the facility may be designed for a lower estimated peak flow, if supporting data included in the report supports the estimate.

(C) A treatment unit, pipe, weir, flume, disinfection unit, or any other treatment unit that is flow limited must be sized to transport or treat the estimated peak flow.

(D) A facility must use a totalizing flow meter for flow measurement.

(3) Design organic loading. If available, actual organic loading data must be used as the basis for design. If actual data is not available, the design organic load must be used as the basis for design. The design organic load is determined by multiplying the projected uses by annual average flow determined from the following table and by using the appropriate influent concentration from the following table:

Figure: 30 TAC §217.32(a)(3)

(b) For an owner constructing a new system to serve the same service area as an existing facility with sufficient historical data, the data from §217.34 of this title (relating to Re-Rating, Upgrading, or Modifying an Existing Facility), may be used to design a wastewater treatment facility if justified in the report.

§217.33. Flow Measurement.

(a) A facility must include a means of accurate effluent flow measurement.

(b) An effluent flow-measuring device must have an open channel to allow for easy inspection, calibration, and cleaning.

(c) Flow measurement must use a combination of primary and secondary measuring devices.

(1) Primary measuring devices.

(A) A primary measuring device must include a weir or a flume.

(B) A primary measuring device must have a non-corrosive ruler (staff gauge) that is graduated in no greater than 1/4 inch increments that are clearly visible.

(C) A primary measuring device must be installed upstream of a secondary measuring device to permit the manual measurement of water depth.

(2) Weirs.

(A) A channel approach section to a weir must be straight for at least 20 times the maximum expected head on a weir.

(B) The minimum height between a channel bottom and a weir crest must be the greater of twice the maximum expected head on the weir or a minimum of 1.0 foot.

(C) The upstream edge of a weir must not be corroded.

(D) The crest of a weir must be exactly level to ensure a uniform depth of flow.

(E) The upstream face of a weir must be smooth and perpendicular to the axis of the channel in both the horizontal and vertical directions.

(F) Upstream of a weir, there must be a secondary measuring device located a minimum distance of the greater of:

(i) three times the maximum expected head on a weir; or

(ii) the distance recommended by the equipment manufacturer.

(3) Flumes.

(A) A flume must be located in a straight section of an open channel.

(B) A flume must be installed in accordance with the manufacturer's recommendations.

(C) A flume must distribute the approaching flow evenly across a flow channel to preclude turbulence and waves.

(4) Secondary measuring devices.

(A) A secondary measuring device must measure the liquid level in the primary measuring device, and must convert this liquid level into a flow rate that is integrated to a totalized flow.

(B) A secondary measuring device must be installed in accordance with the manufacturer's recommendations and in a manner that reduces turbulence and promotes laminar flow.

(C) A secondary measuring device must include a display of the instantaneous flow rate and a means of reading the totalized flow.

§217.34. Re-Rating, Upgrading, or Modifying an Existing Facility.

An owner who proposes to modify, upgrade, or re-rate an existing facility in order to meet an amended permit condition is required to use the facility's current operating data as the design basis for sizing the proposed wastewater treatment equipment and processes. The compiled data must meet the criteria outlined in paragraphs (1) and (2) of this section.

(1) Flows.

(A) The volume of existing flow shall be determined when an existing treatment facility is to be re-rated, expanded, or upgraded.

(B) An existing facility's data for the latest five years must be used to determine the annual average flow, the maximum monthly average flow, the peak flow, the ratio of maximum monthly average flow to annual average flow, and the ratio of the peak flow to the annual average flow. If the facility is less than five years old, all data must be used. All calculations and assumptions must be included in the report.

(C) All flow data for these analyses must be collected by a totalizing meter.

(D) An analysis of the peak flow must be based on a frequency distribution analysis using flow charts for each individual day to determine the maximum sustained flow rate over any two-hour period.

(E) The projected peak flow must be the result of collection system monitoring or modeling based on a two-year, 24-hour storm event for the service area.

(2) Organic loadings.

(A) When an owner seeks to have an existing facility re-rated or to expand or upgrade an existing facility, the design organic loading must be calculated based on the average daily organic load that the facility is required to treat during the design life. A calculation of the average daily organic loading must use the facility's actual data plus one standard deviation. The data must conform at a minimum to the following:

(i) The data must document a minimum of one year, consisting of three samples per week taken during weekdays. If a sampling program is for a frequency of less than three times per week or less than a three-part grab sample, an owner shall document how the proposed sampling program is representative of actual conditions at the facility.

(ii) The samples must be representative of the peak loading.

(iii) Sampling data must include a minimum of five-day carbonaceous biochemical oxygen demand or five-day biochemical oxygen demand, total suspended solids, and ammonia-nitrogen, unless justified because of specific treatment requirements.

(iv) An engineering analysis for the minimum sampling period must include:

(I) a summary of the monthly data;

(II) annual-average monthly load; and

(III) the standard deviation of the monthly data.

(v) An analysis may use a linear regression or other appropriate statistical method for predicting the design organic load when significant data exists.

(B) A design must be based future loading and future flow calculated from the anticipated changes from the existing loading and flow.

(C) The report must justify the design organic loading.

(i) A design organic loading must account for both dry weather and wet weather conditions.

(ii) An owner shall use the design organic loading to determine the size of any treatment unit that provides treatment of organic waste.

§217.35. One Hundred-Year Flood Plain Requirements.

(a) If within 1,000 feet of the site of a proposed facility, the owner must show the 100-year flood plain on the site plan. A flood plain determination must be based on a superimposition of the 100-year flood elevation on the most accurate available topography and elevation of a proposed site.

(1) A 100-year flood plain must be based on the Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) in effect at the time the plans and specifications are submitted to the executive director. FEMA maps are prima facie evidence of flood plain locations.

(2) An appropriate flood insurance rate map or FIS profile adjusted to the project's vertical data determines flood elevations.

(3) If a site is adjacent to a FEMA 100-year flood delineation but has no flood elevation published, a 100-year flood elevation may be determined by overlaying the effective FEMA delineation over a United States Geological Survey Quadrangle Map and interpolating a flood elevation.

(4) If FEMA flood plain information is not available, the report shall include a 100-year flood elevation based on the best information available.

(b) One hundred-year flood plain must be shown on profile.

(1) The FEMA 100-year water surface elevation must be marked on a hydraulic profile of a facility in accordance with the vertical scale of the drawing.

(2) If a proposed facility will occupy less than 1,000 feet of shoreline along a flood plain, the profile must show a single line coincident with the elevation of the centerline of any outfall pipe.

(3) When a proposed facility will occupy 1,000 feet or more of shoreline along a flood plain, the profile must show the water surface elevation at both the upstream and downstream limits of any protective structure for the proposed facility.

(c) The executive director will not approve a design of a proposed treatment unit within a 100-year flood plain, unless the design provides protection for all open process tanks and electric units from inundation during a 100-year flood event.

§217.36. Emergency Power Requirements.

(a) Reliability of existing commercial power service.

(1) An owner shall determine the reliability of the existing commercial power service for a facility from the power outage records obtained from the appropriate power company.

(2) The records must:

(A) be in writing;

(B) be on the utility's letterhead and bear a signature of a utility employee;

(C) identify the location of the wastewater treatment system or off-site lift station(s) being served;

(D) list the total number of outages that have occurred during the past 24 months; and

(E) indicate the date and duration of each recorded outage.

(b) An owner shall submit an power reliability determination and all backup documentation in the report for the approval of the executive director.

(c) If the executive director determines a power supply is unreliable:

(1) the owner will be notified in writing;

(2) the facility shall incorporate an on-site, automatically starting generator, capable of ensuring continuous operation of all critical wastewater treatment system units for a duration equal to the longest power outage in the power records; and

(3) any off-site lift station must incorporate an on-site, automatically-starting generator capable of ensuring continuous operation of the lift station for a duration equivalent to the longest power outage on record for the past 24 months.

(d) Exceptions to the auxiliary power generator requirements for wastewater treatment facilities are:

(1) The requirements for on-site, automatically starting generators for wastewater treatment facilities may be reduced as follows:

(A) Facilities may use lift stations and collection systems to store wastewater in lieu of on-site generators when the report calculations show that sufficient storage volume exists in the lift stations, upstream gravity wastewater collection system lines, and manholes to store the volume of wastewater during a peak diurnal event equal to the longest outage in the power records.

(B) If storage is used in lieu of backup power generators, the report must show that the hydraulic grade line of a collection system is such that in no case will wastewater be allowed to bypass the treatment facility during a peak flow event equal to the longest outage in the power records.

(C) When upstream storage is used as a means of ensuring complete treatment of the influent wastewater, a design must include the following:

(i) Storage is prohibited as a substitute for on-site generators if any of the flow to the treatment facility is gravity flow.

(ii) If the influent storage is less than two hours and power outage records indicate a maximum outage of less than two hours, the on-site, automatically starting generators need only provide sufficient power to operate all components of the disinfection system.

(iii) If the influent storage is at least two hours but not more than four hours and the power outage records indicate an outage of at least two hours but not more than four hours, a generator need only supply sufficient power to operate all or components of the disinfection system. Auxiliary generators are also required to supply power for return activated sludge pumps if the report does not show sufficient volume in the clarifiers for storage of sludge.

(2) Off-Site Lift Stations. Off-site lift stations may substitute portable generators or pumps in combination with collection system storage for on-site generators if the following criteria exist:

(A) the firm pumping capacity of a lift station is less than 100 gallons per minute;

(B) a station includes an auto-dialer or telemetry system with battery backup;

(C) operators knowledgeable in acquisition and startup of the portable generators and pumps are on 24-hour call;

(D) a station is accessible during a 25-year flood event;

(E) reasonable assurances exist as to the timely availability and accessibility of the proper portable equipment; and

(F) a station is equipped with properly designed and tested quick connections.

§217.37. Disinfection System Power Reliability.

(a) A disinfection system must include a backup power system capable of providing sufficient power to operate during any power outage.

(b) A backup power system must automatically restart the disinfection system during a power outage.

(c) A backup power system must meet the requirements of §217.36 of this title (relating to Emergency Power Requirements).

§217.38. Buffer Zones and Odor Abatement.

(a) The buffer zone requirements in §309.13 of this title (relating to Unsuitable Site Characteristics), apply to all areas of a facility.

(b) The report must include the design of any odor abatement measures intended to comply with §309.13(e) - (g) of this title.

(c) An odor abatement measure that is used in lieu of buffer zone requirements is subject to review in accordance with §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

§217.39. Facility Use of Reclaimed Water.

(a) A facility that is designed after the effective date of this chapter must use reclaimed water in place of potable water used for wash down water, irrigating the grounds, and any other appropriate use.

(b) A facility that is designed after the effective date of this chapter must include a meter to measure reclaimed water use at the facility.

(c) An owner must reclaim water after it has been disinfected. A reclaimed water system must provide for screening or filtration, pumping backup with controls, and a pressure-sustaining device such as a hydro-pneumatic tank.

(d) An owner may use only reclaimed water that meets the requirements for Type I or Type II water, in accordance with §210.33 of this title (relating to Quality Standards for Using Reclaimed Water) for wash down water, disinfection system operation, chemical mixing, irrigating the grounds, and any other appropriate use.

(e) An owner may use reclaimed water on a facility site with no further authorization from the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER C. CONVENTIONAL COLLECTION SYSTEMS

30 TAC §§217.51 - 217.70

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC, §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.51. Applicability.
This subchapter applies to the design, construction, operation, and testing standards for conventional gravity wastewater collection systems, conventional wastewater lift stations, force mains for wastewater transport, and reclaimed water conveyance systems.

§217.52. Edwards Aquifer.
An owner who plans to install a wastewater collection system located over the Edwards Aquifer recharge zone must design and install the system in accordance with Chapter 213 of this title (relating to Edwards Aquifer), in addition to these rules.

§217.53. Pipe Design.

(a) Flow Design Basis. An owner must use the requirements of this section to design a gravity collection system.

(1) An owner must design a wastewater collection system to handle the transport of the peak dry weather flow from the service area, plus infiltration and inflow.

(2) The flow calculations must include the details of the average dry weather flow, the dry weather flow peaking factor, and the infiltration and inflow.

(3) The flow calculations must include the flow expected in the facility immediately upon completion of construction and at the end of its 50-year life.

(b) Gravity Pipe Materials.

(1) An owner must identify in the report the proposed gravity collection system pipe with its appropriate American Society for Testing and Materials (ASTM), American National Standards Institute (ANSI), or American Water Works Association (AWWA) standard numbers for both quality control (dimensions, tolerances, etc.) and installation (bedding, backfill, etc.).

(2) The selection of gravity collection system pipe must be based on:

(A) the characteristics of the wastewater conveyed;

(B) the character of industrial wastes;

(C) the possibility of septic conditions;

(D) the exclusion of inflow and infiltration;

(E) any external forces;

(F) any groundwater;

(G) the internal pressures; and

(H) the abrasion and corrosion resistance of the pipe material.

(c) Joints for Gravity Pipe.

(1) The technical specifications for joints for gravity pipe must include the materials and methods used in making joints.

(2) Materials used for gravity pipe joints must prevent infiltration and root entrance. A joint must:

(A) include rubber gaskets,

(B) include polyvinyl chloride (PVC) compression joints,

(C) include high compression polyurethane,

(D) be welded,

(E) be heat fused, or

(F) include other types of factory made joints.

(3) The technical specifications must include ASTM, AWWA, ANSI, or other appropriate national reference standards for the joints.

(d) Separation distances between public water supply pipes and wastewater collection system pipes or manholes.

(1) Collection system pipes must be installed in trenches separate from public water supply trenches.

(2) Collection system pipes must be no closer than nine feet in any direction to a public water supply line.

(3) If a nine-foot separation distance cannot be achieved, the following guidelines will apply.

(A) If a collection system parallels a public water supply pipe the following requirements apply.

(i) A collection system pipe must be constructed of cast iron, ductile iron, or PVC meeting ASTM specifications with at least a 150 pounds per square inch (psi) pressure rating for both the pipe and joints.

(ii) A vertical separation must be at least two feet between the outside diameters of the pipes.

(iii) A horizontal separation must be at least four feet between outside diameters of the pipes.

(iv) A collection system pipe must be below a public water supply pipe.

(B) If a collection system pipe crosses a public water supply pipe, the following requirements apply:

(i) If a collection system is constructed of cast iron, ductile iron, or PVC with a minimum pressure rating of 150 psi, the following requirements apply:

(I) A minimum separation distance is six inches between outside diameters of the pipes.

(II) A collection system pipe must be below a public water supply pipe.

(III) Collection system pipe joints must be located as far as possible from an intersection with a public water supply line.

(ii) If a collection system pipe crosses under a public water supply pipe and the collection system pipe is constructed of acrylonitrile butadiene styrene (ABS) truss pipe, similar semi-rigid plastic composite pipe, clay pipe, or concrete pipe with gasketed joints, the following requirements apply:

(I) A minimum separation distance is two feet.

(II) If a collection system pipe is within nine feet of a public water supply pipe, the initial backfill around the collection system pipe must be:

(-a-) sand stabilized with two or more 80 pound bags of cement per cubic yard of sand for any section of collection system pipe within nine feet of a public water supply pipe.

(-b-) installed from one quarter of the diameter of the collection system pipe below the centerline of the collection system pipe to one pipe diameter (but not less than 12 inches) above the top of the collection system pipe.

(iii) If a collection system crosses over a public water supply pipe, one of the following procedures must be followed:

(I) Each portion of a collection system pipe within nine feet of a public water supply pipe must be constructed of cast iron, ductile iron, or PVC pipe with at least a 150 psi pressure rating using appropriate adapters.

(II) A collection system pipe must be encased in a joint of at least 150 psi pressure class pipe that is:

(-a-) centered on the crossing;

(-b-) sealed at both ends with cement grout or manufactured seal;

(-c-) at least 18 feet long;

(-d-) at least two nominal sizes larger than the wastewater collection pipe; and

(-e-) supported by spacers between the collection system pipe and the encasing pipe at a maximum of five-foot intervals.

(4) Public water supply pipe and collection system manhole separation.

(A) Unless collection system manholes and the connecting collection system pipe are watertight, as supported by leakage tests showing no leakage, they must be installed a minimum of nine feet of horizontal clearance from an existing or proposed public water supply pipe.

(B) If a nine-foot separation distance cannot be achieved, the requirements in paragraph (3) of this subsection apply.

(e) Laterals and taps. Laterals and taps on an installation must:

(1) include a manufactured fitting that limits infiltration;

(2) prevent protruding service lines; and

(3) protect the mechanical and structural integrity of a wastewater collection system.

(f) Bore or tunnel for crossings. The spacing of supports for carrier pipe through casings must maintain the grade, slope, and structural integrity of a pipe as required by subsection (k) of this section.

(g) Corrosion potential.

(1) If a pipe or an integral structural component of a pipe will deteriorate when subjected to corrosive internal conditions or if a pipe or component does not have a corrosive resistant liner installed by the pipe manufacturer, the report must demonstrate the structural integrity of a pipe during the minimum 50-year design life cycle.

(2) A pipe must have an appropriate lining if the corrosion analysis indicates that corrosion will reduce the functional life of the pipe to less than 50 years.

(h) Odor Control.

(1) An owner shall determine if odor control measures are necessary to prevent a wastewater collection system from becoming a nuisance, based upon the potential of the wastewater collection system to generate hydrogen sulfide.

(2) A potential odor determination must include the estimated flows immediately following construction and throughout a system's 50-year expected life cycle.

(i) Active Geologic Faults.

(1) An owner shall identify any active faults within the area of a collection system and minimize the number of collection system lines crossing faults.

(A) Where an active fault crossing is unavoidable, the report must specify design features that protect the integrity of a wastewater collection system in the event of movement of the fault.

(B) If a collection system line cross an active fault line, the design must specify:

(i) joints that provide maximum deflection, as required in subsection (m) of this section; and

(ii) manholes on each side of the fault so that a portable pump may be used in the event of a wastewater collection system failure.

(2) An owner shall not install a collection system service connection within 50 feet of an active fault.

(j) Capacity Analysis.

(1) An owner must ensure that a wastewater collection system's capacity is sufficient to serve the estimated future population, including institutional, industrial, and commercial flows.

(2) An owner must include in the report the calculations that demonstrate that the hydraulic capacity of a collection system includes the peak flow of domestic sewage, peak flow of waste from industrial sites, and maximum infiltration rates.

(3) A collection system must be designed to prevent a surcharge in any pipe at the expected peak flow.

(4) The minimum diameter allowed for a gravity pipe is 6.0 inches.

(5) Connecting storm water drains to a collection system is prohibited.

(6) An owner may use the data from an existing collection system. In the absence of existing data, a design must use data from a similar system or as described in paragraph (7) of this subsection.

(7) New collection systems.

(A) The sizing of pipe for a new collection system must be based on an engineering analysis of initial and future flows.

(B) A new collection system design must be based on the estimated daily sewage flow contribution as shown in Figure: 30 TAC §217.32(a)(3), Table B.1 of this title (relating to Organic Loadings and Flows).

(k) Structural Analysis.

(1) An owner must ensure that a collection system is designed to have a minimum structural life of 50 years.

(2) For flexible pipe, which is pipe that will deflect at least 2% without structural distress, used in a collection system, the report must include:

(A) live load calculations;

(B) allowable buckling pressure determinations;

(C) prism load calculations;

(D) wall crushing determinations;

(E) strain prediction calculations;

(F) calculations that quantify long term pipe deflection; and

(G) all information pertinent to a determination of an adequate design including, but not limited to:

(i) the method of determining the modulus of soil reaction for bedding material and in-situ material;

(ii) pipe diameter and material with reference to appropriate standards;

(iii) modulus of elasticity,

(iv) tensile strength,

(v) pipe stiffness or ring stiffness constant converted to pipe stiffness;

(vi) Leonhardt's zeta factor;

(vii) trench width;

(viii) depth of cover;

(ix) water table elevation; and

(x) unit weight of soil.

(3) The design procedure dictates a minimum pipe stiffness. For trench installations, the design must specify a minimum stiffness requirement to ensure ease of handling, transportation, and construction. Pipe stiffness must be related to ring stiffness constant by the following equation:
Figure: 30 TAC §217.53(k)(3)

(4) Pipe that meet all the requirements in this paragraph are not required to perform the structural calculations in paragraph (3) of this subsection, provided that a pipe is installed and tested in accordance with all other requirements of this subchapter:

(A) open trench design;

(B) flexible pipe with a pipe stiffness of 46 psi or greater;

(C) buried 17 feet or less;

(D) diameter of 12 inches or less;

(E) modulus of soil reaction for the in-situ soil of 200 psi or greater;

(F) no effects on a pipe due to live loads;

(G) a unit weight of soil of 120 pounds per cubic foot or less; or

(H) a pipe trench width of 36 inches or greater.

(5) A design analysis for rigid pipe installations must be included in the report, including a structural analysis and any details necessary to verify that the structural strength is sufficient to withstand the expected stresses. For rigid conduits, the minimum strength for each class of pipe material and the appropriate standard must be included.

(l) Minimum and Maximum Slopes.

(1) All wastewater collection systems must contain slopes sufficient to allow a velocity when flowing full of not less than 2.0 feet per second.

(2) Absent site-specific data, a collection system must be designed in accordance with the minimum and maximum slopes specified in this paragraph.

(A) The grades shown in the following table are based on Manning's formula with an assumed "n factor" of 0.013 and are the minimum acceptable slopes.
Figure: 30 TAC §217.53(l)(2)(A)

(i) The minimum acceptable "n" value for design and construction is 0.013.

(ii) The "n" value must take into consideration the slime, grit, and grease layers that will affect hydraulics or hinder flow as a pipe ages.

(B) If a velocity greater than 10 feet per second will occur when a pipe flows full, based on Manning's formula, shown in the following figure, and an "n" value of 0.013, special provisions must protect against pipe and bedding displacement.
Figure: 30 TAC §217.53(l)(2)(B)

(m) Alignment.

(1) A gravity collection system must be laid with a uniform grade between manholes.

(2) The report must justify any deviation from straight alignment by complying with the requirements of this section.

(3) Deviation from uniform grade (e.g., grade breaks or vertical curves) without manholes and with open cut construction is prohibited.

(4) The calculations for horizontal pipe curvature and the detail of the proposed curvature on the plans must be included in the report.

(5) A construction method that flexes a pipe joint is prohibited, unless a joint deflection meets the least of the following:

(A) equal to 5 degrees;

(B) less than or equal to 80% of the manufacturer's recommended maximum deflection; or

(C) 80% of the appropriate ASTM, AWWA, ANSI, or other nationally established standard for joint deflection.

(6) The maximum allowable manhole spacing for collection systems with horizontal curvature is 300 feet. A manhole must be at the point of curvature and the point of termination of a curve.

(n) Inverted Siphons and Sag Pipes.

(1) A sag pipe must include:

(A) two or more barrels;

(B) a minimum pipe diameter of 6.0 inches; and

(C) the necessary appurtenances for convenient flushing and maintenance.

(2) A manhole must include adequate clearance for rodding and cleaning.

(3) Sag pipes must be sized and designed with sufficient head to achieve a velocity of at least 3.0 feet per second at initial and design flows.

(4) The arrangement of inlet and outlet details must divert the normal flow to one barrel.

(5) A system must allow any barrel to be taken out of service for cleaning.

(6) Provisions must be made to allow cleaning across each bend with equipment available to the entity operating the collection system.

(7) Sag pipe must be designed to minimize nuisance odors.

(8) Inverted siphons and sag pipes must be pressure tested according to the requirement of §217.57 of this title (relating to Testing Requirements for Installation of Gravity Collection System Pipes).

(o) Bridged Sections.

(1) Pipe with restrained joints or monolithic pipe across a bridged section requires a manhole on each end.

(2) A bridged section must withstand the hydraulic forces applied by the occurrence of a 100-year flood event for a collection system site, including buoyancy.

(3) A bridged section must be capable of withstanding impacts from debris.

(4) Bank sections must be stabilized to prevent erosion.

(5) Bridge supports must be designed to ensure that a pipe has adequate grade, slope, and structural integrity.

§217.54. Criteria for Laying Pipe.

(a) Pipe Embedment.

(1) A rigid pipe must be laid with the adequate bedding, haunching, and initial backfill to support the anticipated load. The bedding classes that are allowed are A, B, or C, as described in American Society for Testing and Materials (ASTM) C 12, American National Standards Institute (ANSI) A 106.2, Water Environment Federation Manual of Practice No. 9 or American Society of Civil Engineers (ASCE) MOP 37.

(2) A flexible pipe must be laid with the adequate bedding, haunching, and initial backfill to support the anticipated load. The bedding classes that are allowed are IA, IB, II, or III, as described in ASTM D-2321 or ANSI K65.171.

(3) Debris, large clods, or stones that are greater than six inches in diameter, organic matter, or other unstable materials are prohibited as bedding, haunching, or initial backfill.

(4) Backfill must not disturb the alignment of a collection system pipe.

(5) If trenching encounters significant fracture, fault zones, caves, or solutional modification to the rock strata, an owner must halt construction until an engineer prepares a written report detailing how construction will accommodate these site conditions.

(b) Compaction.

(1) Compaction of an embedment envelope must meet the manufacturer's recommendations for the collection system pipe used in a project.

(2) Compaction of an embedment envelope must provide the modulus of soil reaction for the bedding material necessary to ensure a wastewater collection system pipe's structural integrity as required by §217.53 of this title (relating to Pipe Design).

(3) The placement of the backfill above a pipe must not affect the structural integrity of a pipe.

(c) Envelope Size.

(1) A minimum clearance of 6.0 inches below and on each side of the bell of all pipes to the trench walls and floor is required.

(2) The embedment material used for haunching and initial backfill must be installed to a minimum depth of 12 inches above the crown of a pipe.

(d) Trench Width.

(1) The width of a trench must allow a pipe to be laid and jointed properly and must allow the backfill to be placed and compacted as needed.

(2) The maximum and minimum trench width needed for safety and a pipe's structural integrity must be included in the report.

(3) The width of a trench must be sufficient to properly and safely place and compact haunching materials.

(4) The space between a pipe and a trench wall must be wider than the compaction equipment used in the pipe zone.
Figure: 30 TAC §217.54(d)(4)

§217.55. Manholes and Related Structures.

(a) An owner must include manholes in a wastewater collection system at:

(1) all points of change in alignment, grade, or size;

(2) at the intersection of all pipes; and

(3) at the end of all pipes that may be extended at a future date.

(b) Manholes placed at the end of a wastewater collection system pipe that may be extended in the future must include pipe stub outs with plugs.

(c) A clean-out with watertight plugs may be installed in lieu of a manhole at the end of a wastewater collection system pipe if no extensions are anticipated.

(d) Cleanout installations must pass all applicable testing requirements outlined for gravity collection pipes in §217.57 of this title (relating to Testing Requirements for Installation of Gravity Collection System Pipes).

(e) A manhole must be made of monolithic, cast-in-place concrete, fiberglass, pre-cast concrete, high-density polyethylene, or equivalent material that provides adequate structural integrity.

(f) The use of bricks to adjust a manhole cover to grade or construct a manhole is prohibited.

(g) Manholes may be spaced no further apart than the distances specified in the following table for a wastewater collection system with straight alignment and uniform grades, unless a variance based on the availability of cleaning equipment that is capable of servicing greater distances is granted by the executive director.
Figure: 30 TAC §217.55(g)

(h) Tunnels are exempt from manhole spacing requirements because of construction constraints.

(i) An intersection of three or more collection pipes must have a manhole.

(j) A manhole must not be located in the flow path of a watercourse, or in an area where ponding of surface water is probable.

(k) The inside diameter of a manhole must be no less than 48 inches. A manhole diameter must be sufficient to allow personnel and equipment to enter, exit, and work in the manhole and to allow proper joining of the collection system pipes in the manhole wall.

(l) Manholes must meet the following requirements for covers, inlets, and bases.

(1) Manhole Covers.

(A) A manhole where personnel entry is anticipated requires at least a 30 inch diameter clear opening.

(B) A manhole located within a 100-year flood plain must have a means of preventing inflow.

(C) A manhole cover construction must be constructed of impervious material.

(D) A manhole cover that is located in a roadway must meet or exceed the American Association of State Highways and Transportation Officials standard M-306 for load bearing.

(2) Manhole Inverts.

(A) The bottom of a manhole must contain a U-shaped channel that is a smooth continuation of the inlet and outlet pipes.

(B) A manhole connected to a pipe less than 15 inches in diameter must have a channel depth equal to at least half the largest pipe's diameter.

(C) A manhole connected to a pipe at least 15 inches in diameter but not more than 24 inches in diameter must have a channel depth equal to at least three-fourths of the largest pipe's diameter.

(D) A manhole connected to a pipe greater than 24 inches in diameter must have a channel depth equal to at least the largest pipe's diameter.

(E) A manhole with pipes of different sizes must have the tops of the pipes at the same elevation and flow channels in the invert sloped on an even slope from pipe to pipe.

(F) A bench provided above a channel must slope at a minimum of 0.5 inch per foot.

(G) An invert must be filleted to prevent solids from being deposited if a wastewater collection system pipe enters a manhole higher than 24 inches above a manhole invert.

(H) A wastewater collection system pipe entering a manhole more than 24 inches above an invert must have a drop pipe.

(m) The inclusion of steps in a manhole is prohibited.

(n) Connections. A manhole-pipe connection must use watertight, size-on-size resilient connectors that allow for differential settlement and must conform to American Society for Testing and Materials C-923.

(o) Venting. An owner must use an alternate means of venting if manholes are at more than 1,500 foot intervals and gasketed manhole covers are required for more than three manholes in sequence. Vents must meet the following requirements:

(1) Vent design must minimize inflow;

(2) Vents must be located above a 100-year flood event elevation; and

(3) Tunnels must be vented in compliance with this subsection.

(p) Cleanouts. The size of a cleanout must be equal to the size of the wastewater collection system main.

§217.56. Trenchless Pipe Installation.

(a) The following trenchless technologies may be used for installation of new wastewater collection system pipe:

(1) impact moling, which is technique that launches a percussive soil displacement hammer (mole) from an excavation to displace soil and form a bore. The new pipe is drawn behind the mole or pulled into the bore using the hammer's reverse action. A pneumatically driven mole displaces the soil by the action of a percussive piston;

(2) pipe ramming, which is a simple technique using a pneumatic hammer to drive steel casings through the ground from one pit to another; or

(3) microtunneling, which is a remotely controlled mechanical tunneling system where the spoil is removed from the cutting head within the new pipeline, which is advanced by pipe jacking. The cutting head must have the appropriate cutting tools and crushing devices for the range of gravels, sands, silts, and clays that may be found at the collection system site.

(b) The following trenchless technologies may be used for replacement of wastewater collection system pipe:

(1) pipe bursting, which is a method of on-line replacement of fracturable pipe. An expanding device, either pneumatic or hydraulic, is introduced into the defective pipeline, shattering the pipe and drawing in the new pipe behind it. Insertion of short lengths may be made from pits but this involves jointing of the pipeline within the pit;

(2) pipe splitting, which is similar in technique to pipe bursting but is used on non-fragmental pipes such as steel, ductile iron or polyethylene. The system uses specialized splitting heads designed to cut through the pipe wall and joints and expand the existing pipe into the surrounding ground; or

(3) pipe eating, which is an on-line microtunneled replacement technique. The existing defective pipeline is crushed (or eaten), by the tunneling machine and removed through the new pipeline. It is used predominantly on concrete sewer installations. This system allows for size replacement and upsizing.

(c) The following trenchless technologies may be used for lining of existing wastewater collection system pipe, which reduces the inside diameter of the pipe:

(1) cement mortar lining, which is the application of a cement mortar (typically about four millimeters thick) to the inside of a pipe to protect against corrosion;

(2) epoxy spray lining, which is a method of lining pipes with a thin lining of resin (typically about one millimeter thick) that is sprayed onto the interior surface of a cleaned collection system pipe to isolate the pipe from the wastewater and possibly reinforce the structural capabilities of the pipe;

(3) cure in place pipe, which is method of lining existing pipe with a flexible tube impregnated with a resin that produces a pipe after the resin cures. The resin may be set by the use of heat or ultraviolet light; or

(4) sliplining, by which continuous or discreet pipes are inserted within existing pipes.

(d) Any other trenchless method of installing, replacing, or repairing collection system pipe is nonconforming technology and subject to the requirements of §217.7(b) of this title (relating to Types of Plans and Specifications Approvals).

(e) A wastewater collection system using a trenchless technology must be designed, installed, and constructed in accordance with American Society for Testing and Materials (ASTM) or American Water Works Association (AWWA) standards with reference to materials used and construction procedures. In the absence of ASTM or AWWA standards, executive director review may be based upon other recognized standards utilized by industry engineers.

(f) The report must include the following;

(1) the trenchless method;

(2) the type of pipe;

(3) the type(s) of soil;

(4) the pipe length and diameter;

(5) pipe slope;

(6) the method for disconnecting and reconnecting lateral and service connections;

(7) the provisions for flow bypass for existing system; and

(8) the pipe standard.

(g) Lateral and service connections must be disconnected prior to repair or replacement of existing collection system pipe.

(h) Pipe installed by a trenchless technology is subject to the testing requirements in §217.57 of this title (relating to Testing Requirements for Installation of Gravity Collection System Pipes) and §217.68 of this title (relating to Force Main Testing).

§217.57. Testing Requirements for Installation of Gravity Collection System Pipes.

(a) For a collection system pipe that will transport wastewater by gravity flow, the design must specify an infiltration and exfiltration test or a low-pressure air test. A test must conform to the following requirements:

(1) Low Pressure Air Test.

(A) A low pressure air test must follow the procedures described in American Society For Testing And Materials (ASTM) C-828, ASTM C-924, or ASTM F-1417 or other procedure approved by the executive director, except as to testing times as required in Table C.3 in subparagraph (B)(ii) of this paragraph or Equation 3.c in subparagraph (C) of this paragraph.

(B) For sections of collection system pipe less than 36 inch average inside diameter, the following procedure must apply, unless a pipe is to be tested as required by paragraph (2) of this subsection.

(i) A pipe must be pressurized to 3.5 pounds per square inch (psi) greater than the pressure exerted by groundwater above the pipe.

(ii) Once the pressure is stabilized, the minimum time allowable for the pressure to drop from 3.5 psi gauge to 2.5 psi gauge is computed from the following equation:
Figure: 30 TAC§217.57(a)(1)(B)(ii)

(C) Since a K value of less than 1.0 may not be used, the minimum testing time for each pipe diameter is shown in the following table:
Figure: 30 TAC §217.57(a)(1)(C)

(D) An owner may stop a test if no pressure loss has occurred during the first 25% of the calculated testing time.

(E) If any pressure loss or leakage has occurred during the first 25% of a testing period, then the test must continue for the entire test duration as outlined above or until failure.

(F) Wastewater collection system pipes with a 27 inch or larger average inside diameter may be air tested at each joint instead of following the procedure outlined in this section.

(G) A testing procedure for pipe with an inside diameter greater than 33 inches must be approved by the executive director.

(2) Infiltration/Exfiltration Test.

(A) The total exfiltration, as determined by a hydrostatic head test, must not exceed 50 gallons per inch of diameter per mile of pipe per 24 hours at a minimum test head of 2.0 feet above the crown of a pipe at an upstream manhole.

(B) An owner shall use an infiltration test in lieu of an exfiltration test when pipes are installed below the groundwater level.

(C) The total infiltration, as determined by a hydrostatic head test, must not exceed 50 gallons per inch diameter per mile of pipe per 24 hours at a minimum test head of two feet above the crown of a pipe at an upstream manhole, or at least two feet above existing groundwater level, whichever is greater.

(D) For construction within a 25-year flood plain, the infiltration or exfiltration must not exceed 10 gallons per inch diameter per mile of pipe per 24 hours at the same minimum test head as in subparagraph (C) of this paragraph.

(E) If the quantity of infiltration or exfiltration exceeds the maximum quantity specified, an owner shall undertake remedial action in order to reduce the infiltration or exfiltration to an amount within the limits specified. An owner shall retest a pipe following a remediation action.

(b) If a gravity collection pipe is composed of flexible pipe, deflection testing is also required. The following procedures must be followed:

(1) For a collection pipe with inside diameter less than 27 inches, deflection measurement requires a rigid mandrel.

(A) Mandrel Sizing.

(i) A rigid mandrel must have an outside diameter (OD) not less than 95% of the base inside diameter (ID) or average ID of a pipe, as specified in the appropriate standard by the ASTMs, American Water Works Association, UNI-BELL, or American National Standards Institute, or any related appendix.

(ii) If a mandrel sizing diameter is not specified in the appropriate standard, the mandrel must have an OD equal to 95% of the ID of a pipe. In this case, the ID of the pipe, for the purpose of determining the OD of the mandrel, must equal be the average outside diameter minus two minimum wall thicknesses for OD controlled pipe and the average inside diameter for ID controlled pipe.

(iii) All dimensions must meet the appropriate standard.

(B) Mandrel Design.

(i) A rigid mandrel must be constructed of a metal or a rigid plastic material that can withstand 200 psi without being deformed.

(ii) A mandrel must have nine or more odd number of runners or legs.

(iii) A barrel section length must equal at least 75% of the inside diameter of a pipe.

(iv) Each size mandrel must use a separate proving ring.

(C) Method Options.

(i) An adjustable or flexible mandrel is prohibited.

(ii) A test may not use television inspection as a substitute for a deflection test.

(iii) If requested, the executive director may approve the use of a deflectometer or a mandrel with removable legs or runners on a case-by-case basis.

(2) For a gravity collection system pipe with an inside diameter 27 inches and greater, other test methods may be used to determine vertical deflection.

(3) A deflection test method must be accurate to within plus or minus 0.2% deflection.

(4) An owner shall not conduct a deflection test until at least 30 days after the final backfill.

(5) Gravity collection system pipe deflection must not exceed five percent (5%).

(6) If a pipe section fails a deflection test, an owner shall correct the problem and conduct a second test after the final backfill has been in place at least 30 days.

(7) An owner shall not use any mechanical pulling devices during testing.

(8) An owner shall include a certification in the construction report or the notice of completion required in §217.14 of this title (relating to Completion Notice), that the wastewater collection system passed the deflection tests.

(c) An owner of a collection system must inspect the structural analysis of collection system under the direction of an engineer during the construction and testing phases of the project.

§217.58. Testing Requirements for Manholes.

(a) All manholes must pass a leakage test.

(b) An owner shall test each manhole (after assembly and backfilling) for leakage, separate and independent of the collection system pipes, by hydrostatic exfiltration testing, vacuum testing, or other method approved by the executive director.

(1) Hydrostatic Testing.

(A) The maximum leakage for hydrostatic testing or any alternative test methods is 0.025 gallons per foot diameter per foot of manhole depth per hour.

(B) To perform a hydrostatic exfiltration test, an owner shall seal all wastewater pipes coming into a manhole with an internal pipe plug, fill the manhole with water, and maintain the test for at least one hour.

(C) A test for concrete manholes may use a 24-hour wetting period before testing to allow saturation of the concrete.

(2) Vacuum Testing.

(A) To perform a vacuum test, an owner shall plug all lift holes and exterior joints with a non-shrink grout and plug all pipes entering a manhole.

(B) No grout must be placed in horizontal joints before testing.

(C) Stub-outs, manhole boots, and pipe plugs must be secured to prevent movement while a vacuum is drawn.

(D) An owner shall use a minimum 60 inch/lb torque wrench to tighten the external clamps that secure a test cover to the top of a manhole.

(E) A test head must be placed at the inside of the top of a cone section, and the seal inflated in accordance with the manufacturer's recommendations.

(F) There must be a vacuum of 10 inches of mercury inside a manhole to perform a valid test.

(G) A test does not begin until after the vacuum pump is off.

(H) A manhole passes the test if after 2.0 minutes and with all valves closed, the vacuum is at least 9.0 inches of mercury.

§217.59. Lift Station Site Requirements.

(a) Site access.

(1) A lift station design must include an access road located in a dedicated right-of-way or a permanent easement.

(2) A road surface must have a minimum width of 12 feet and must be constructed for use in all weather conditions.

(3) A road surface must be above the water level caused by a 25-year rainfall event.

(b) Security.

(1) The design of a lift station, including all mechanical and electrical equipment, must restrict access by an unauthorized person.

(2) A lift station must include an intruder-resistant fence, enclosure, or a lockable structure.

(3) An intruder-resistant fence must use a minimum of a 6.0 feet high chain link, masonry, or board fence with at least a 1.0 foot section of three strands of barbed wire.

(c) Flood Protection. The design of a lift station, including all electrical and mechanical equipment, must be designed to withstand and operate during a 100-year flood event, including wave action.

(d) Odor Control. The design of a lift station must minimize potential odor. An owner shall include any design for odor control in the report.

§217.60. Lift Station, Wet Well, and Dry Well Designs.

(a) Pump Controls.

(1) A lift station pump must operate automatically, based on the water level in a wet well.

(2) The location of a wet well level mechanism must ensure that the mechanism is unaffected by currents, rags, grease, or other floating materials.

(3) A level mechanism must be accessible without entering the wet well.

(4) Wet well controls with a bubbler system require dual air supply and dual controls.

(5) Motor control centers must be mounted on a 4.0 inch tall housekeeping pad.

(6) Electrical equipment and electrical connections in a wet well or a dry well must be meet National Electric Code explosion prevention requirements, unless continuous ventilation is provided.

(b) Wet Wells.

(1) A wet well must be enclosed by watertight and gas tight walls.

(2) A penetration through a wall of a wet well must be gas tight.

(3) A wet well must not contain equipment requiring regular or routine inspection or maintenance, unless inspection and maintenance can be done without staff entering the wet well.

(4) A gravity pipe discharging to a wet well must be located so that the invert elevation is above the liquid level of a pump's "on" setting.

(5) Gate valves and check valves are prohibited in a wet well.

(6) Gate valves and check valves may be located in a valve vault next to a wet well or in a dry well.

(7) Pump cycle time, based on peak flow, must equal or exceed those in the following table:
Figure: 30 TAC §217.60(b)(7)

(8) An evaluation of minimum wet well volume requires the following formula:
Figure: 30 TAC §217.60(b)(8)

(c) Dry well access.

(1) An underground dry well must be accessible.

(2) A stairway in a dry well must use non-slip steps and conform to Occupational Safety and Health Administration regulations with respect to rise and run.

(3) A ladder in a dry well must made of non-conductive material and rated for the load necessary for staff and equipment to descend and ascend.

(d) Lift Station Ventilation.

(1) Passive Ventilation for Wet Wells.

(A) Passive ventilation structures must include screening to prevent the entry of birds and insects to a wet well.

(B) All mechanical and electrical equipment in a wet well with passive ventilation must be constructed in compliance with explosion requirement in the National Electric Code.

(C) A passive ventilation system must be sized to vent at a rate equal to the maximum pumping rate of a lift station, but not to exceed 600 feet per minute through a vent pipe.

(D) The minimum acceptable diameter for an air vent is 4.0 inches.

(E) A vent outlet must be at least 1.0 foot above a 100-year flood plain elevation.

(2) Mechanical Ventilation in Lift Stations.

(A) Dry Wells.

(i) A dry well must use mechanical ventilation.

(ii) Ventilation equipment under continuous operation must have a minimum capacity of six air exchanges per hour.

(iii) Ventilation equipment under intermittent operations must have a minimum capacity of 30 air exchanges per hour and be connected to a lift station's lighting system.

(B) Wet Wells.

(i) A wet well must use continuous mechanical ventilation.

(ii) The ventilation equipment must have a minimum capacity of 12 air exchanges per hour and be constructed of corrosion resistant material.

(iii) The design of a wet well must reduce odor potential in a populated area.

(e) Wet Well Slopes.

(1) A wet well floor must have a smooth finish and minimum slope of 10% to a pump intake.

(2) A wet well design must prevent deposition of solids under normal operating conditions.

(3) A lift station with greater than 5.0 million gallons per day firm pumping capacity must have anti-vortex baffling.

(f) Hoisting Equipment. A lift station must have permanent hoisting equipment or be accessible to portable hoisting equipment for removal of pumps, motors, valves, pipes, and other similar equipment.

(g) Valve Vault Drains. A floor drain from a valve vault to a wet well must prevent gas from entering a valve vault by including flap valves, "P" traps, submerged outlets, or a combination of these devices.

(h) Dry Well Sump Pumps.

(1) Pumps.

(A) A dry well must use dual sump pumps, each with a minimum capacity of 1,000 gallons per hour and capable of handling the volume of liquid generated during peak operations.

(B) A pump must have a submersible motor and watertight wiring.

(C) A dry well floor must slope toward a sump sized for proper drainage.

(D) The minimum sump depth is 6.0 inches and must prevent standing water on a dry well floor under normal operation.

(E) A sump pump must operate automatically by use of a float switch or other level-detecting device.

(2) Pipes.

(A) A sump pump must use separate pipes capable of discharging more than the maximum liquid level of an associated wet well.

(B) A sump pump outlet pipe must be at least 1.5 inches in diameter and have at least two check valves in series.

§217.61. Lift Station Pumps.

(a) General Requirements. A raw wastewater pump, with the exception of a grinder pump, must:

(1) be designed to prevent clogging;

(2) be capable of passing a sphere of 2.5 inches in diameter or greater; and

(3) have greater than 3.0 inch diameter suction and discharge openings.

(b) Submersible and Non-submersible Pumps.

(1) A non-submersible pump must have inspection and cleanout plates on both the suction and discharge sides of each pumping unit that facilitate locating and removing blockage-causing materials, unless the pump design accommodates easy removal of the rotation elements.

(2) A pump support must prevent movement and vibration during operation.

(3) A submersible pump must use a rail-type pump support system with manufacturer-approved mechanisms designed to allow personnel to remove and replace any single pump without entering or dewatering the wet well.

(4) Submersible pump rails and lifting chains must be constructed of a material that performs to at least the standard of Series 300 stainless steel.

(c) Lift Station Pumping Capacity. The firm pumping capacity of a lift station must handle the expected peak flow.

(d) Pump Head Calculations.

(1) An owner shall select a pump based upon analysis of the system head and pump capacity curves that determine the pumping capacities alone and with other pumps as the total dynamic-head increases due to additional flows pumped through a force main.

(2) The pipe head loss calculations, using the Hydraulic Institute Standards, pertaining to head losses through pipes, valves, and fittings, must be included in the report.

(3) The selected friction coefficient (Hazen-Williams "C" value) used in friction head loss calculations must be based on the pipe material selected.

(4) For a lift station with more than two pumps, a force main in excess of one-half mile, or firm pumping capacity of 100 gallons per minute or greater, system curves must be provided for both the normal and peak operating conditions at C values for proposed and existing pipe.

(e) Flow Control.

(1) A lift station or a transfer pumping station located at or discharging directly to a wastewater treatment system must have a peak pump capacity equal to or less than the peak design flow, unless equalization is provided.

(2) A wastewater treatment system with a peak flow that is greater than 300,000 gallon per day must use three or more pumps, unless duplex, automatically controlled, variable capacity pumps are provided.

(f) Self-Priming Pumps.

(1) A self-priming pump must be capable of priming without reliance upon a separate priming system, an internal flap valve, or any external means for priming.

(2) A self-priming pump must use a suction pipe velocity at least 3.0 feet per second but not more than 7.0 feet per second, and must incorporate its own suction pipe.

(3) A self-priming pump must vent air back into the wet well during priming.

(g) Vacuum-Priming Pumps.

(1) A vacuum-primed pump must be capable of priming by using a separate positive priming system with a dedicated vacuum pump for each main wastewater pump.

(2) A vacuum-priming pump must use a suction pipe velocity at least 3.0 feet per second but less than 7.0 feet per second and must have its own suction pipe.

(h) Vertical Positioning of Pumps. A raw wastewater pump must have positive static suction head during normal on-off cycling, except a submersible pump with "no suction" pipes, a vacuum-primed pump, or a self-priming unit capable of satisfactory operation under any negative suction head anticipated for the lift station.

(i) Individual Grinder Pumps. A grinder pump serving only one residential or commercial structure that is privately owned, maintained, and operated is not subject to the rules of this chapter.

(j) Pump for Low-Flow Lift Station. A pump used for a lift station with a peak flow of less than 120 gallons per minute must be submersible and include a grinder.

§217.62. Lift Station Pipes.

(a) Horizontal Pump Suctions.

(1) Each pump must have a separate suction pipe that uses an eccentric reducer.

(2) Pipes in a wet well must have a turndown type flared intake.

(b) Valves.

(1) The discharge side of each pump followed by a full-closing isolation valve must also have a check valve.

(A) A check valve must be a swing type valve with an external lever.

(B) A valve must include a position indicator to show its open and closed positions, unless a full-closing valve is a rising-stem gate valve.

(2) A grinder pump installation may use a rubber-ball check valve or a swing-type check valve.

(3) A butterfly valve, tilting-disc check valve, or any other valve using a tilting-disc in a flow pipe is prohibited.

(c) Pipes.

(1) A lift station pipe must have flanged or flexible connections to allow for removal of pumps and valves without interruption of the lift station operations.

(2) Wall penetrations must allow for pipe flexure while excluding exfiltration or infiltration.

(3) Pipe suction velocities must be at least 3.0 feet per second but not more than 7.0 feet per second.

§217.63. Emergency Provisions for Lift Stations.

(a) A collection system lift station must be equipped with a tested quick-connect mechanism or a transfer switch properly sized to connect to a portable generator, if not equipped with an onsite generator.

(b) Lift stations must include an audiovisual alarm system and the system must transmit all alarm conditions through use of an autodialer system, Supervisory Control and Data Acquisition system, or telemetering system connected to a continuously monitored location.

(c) An alarm system must self-activate for a power outage, pump failure, or a high wet well water level.

(d) A lift station constructed to pump raw wastewater must have service reliability based on:

(1) Retention Capacity.

(A) The retention capacity in a lift station's wet well and incoming gravity pipes must prevent discharges of untreated wastewater at the lift station or any point upstream for a period of time equal to the longest electrical outage recorded during the past 24 months, but not less than 20 minutes.

(B) For calculation purposes, the outage period begins when a lift station pump finished its last normal cycle, excluding a standby pump.

(2) On-Site Generators. A lift station may be provided emergency power by on-site, automatic electrical generators sized to operate the lift station at its firm pumping capacity or at the average daily flow, if the peak flow can be stored in the collection system.

(3) Portable Generators and Pumps.

(A) A lift station may use portable generators and pumps to guarantee service if the report includes:

(i) the storage location of each generator and pump;

(ii) the amount of time that will be needed to transport each generator or pump to a lift station;

(iii) the number of lift stations for which each generator or pump is dedicated as a backup; and

(iv) the type of routine maintenance and upkeep planned for each portable generator and pump to ensure that they will be operational when needed.

(B) An operator that is knowledgeable in operation of the portable generators and pumps shall be on call 24 hours per day every day.

(C) The size of a portable generator must handle the firm pumping capacity of the lift station.

(e) Spill Containment Structures.

(1) The use of a spill containment structure as a means of providing service reliability is prohibited.

(2) A lift station may use a spill containment structure in addition to one of the service reliability options detailed in this in subsection (a) of this section.

(3) The report must include a detailed management plan for cleaning and maintaining each spill containment structure.

(4) A spill containment structure must have a locked gate and be surrounded by a 6.0 foot high chain link or board fence that is topped with a minimum of three strands of barbed wire.

(f) A lift station must be fully accessible during a 25-year 24-hour rainfall event.

§217.64. Materials for Force Main Pipes.

(a) Force main pipe material must withstand the pressure generated by instantaneous pump stoppage due to power failure under maximum pumping conditions.

(b) The use of pipe or fittings rated at a working pressure of less than 150 pounds per square inch is prohibited.

(c) Pipe must be identified in the technical specifications with the appropriate specification number for both quality control and installation from the American Society For Testing And Materials, American National Standards Institute, or American Water Works Association.

(d) Pipe material specified for a force main must have an expected life equal to or longer than that of the lift station and must be suitable for the material being pumped.

§217.65. Force Main Pipe Joints.

(a) An underground force main pipe joint must include either push-on rubber gaskets or mechanical joints with a pressure rating equal or greater than the force main pipe material.

(b) Exposed force main pipe joints must be flanged or flexible and adequately secured to prevent movement due to surges.

(c) American Society for Testing and Materials, American Water Works Association, or other widely accepted national reference standard for the joints must be included in the project specifications.

§217.66. Identification of Force Main Pipes.

(a) A detector tape must be laid in the same trench as a force main pipe. The detector tape must be located above and parallel to the force main.

(b) The detector tape must bear the label "PRESSURIZED WASTEWATER" continuously repeated in at least 1.5 inch letters.

§217.67. Force Main Design.

(a) Velocities.

(1) A force main must be a minimum of 4.0 inches in diameter, unless it is used in conjunction with a grinder pump station.

(2) For a duplex pump station, the minimum velocity is 3.0 feet per second with one pump in operation.

(3) For a pump station with three or more pumps:

(A) the minimum velocity in a force main is 2.0 feet per second with only the smallest pump in operation; and

(B) a minimum flushing velocity of 5.0 feet per second or greater must occur in a force main at least once daily.

(4) The report must certify that a pipeline with a velocity greater than 6.0 feet per second can withstand high and low negative surge pressures in event of sudden pump failure.

(b) Detention Time.

(1) A force main detention time calculations must be included in the report.

(2) The force main detention time calculations must be performed using a range of flow rates that represent the flows expected to be delivered to a force main by an upstream pump station during any 24-hour period.

(c) Water Hammer. A force main design must include surge control measures to manage pressure due to water hammer that may exceed the working strength of a force main pipe.

(d) Connection to Gravity Main.

(1) A force main must terminate in an appropriate structure and either at a manhole on the wastewater collection system or at a wastewater treatment facility.

(2) The discharge end of a force main inside a manhole must remain steady and produce non-turbulent flow.

(3) A receiving wastewater collection system must accept the maximum pump discharge without surcharging.

(e) Pipe Separation. A separation distance between a force main and any water supply water pipe must meet the minimum separation requirements established in §217.53(d) of this title (relating to Pipe Design).

(f) Odor Control.

(1) A force main must terminate below a manhole invert with the top of the pipe matching the water level in the manhole at design flow.

(2) A force main must be designed to abate any anticipated odor.

(g) Air Release Valves in Force Mains.

(1) Any high point along the vertical force main alignment must include an air release valve or a combination of air release and air vacuum valves.

(2) An air release valve must have an isolation valve between the air release valve and the force main.

(3) An air release valve must be inside of a vault that is at least 48 inches in diameter and has a vented access opening at least 30 inches in diameter.

(h) Valves. A force main must have valves spaced at no more than 2,000 foot intervals to facilitate initial testing and subsequent maintenance and repairs.

§217.68. Force Main Testing.

(a) The final plans and specifications must include the pressure testing procedures.

(b) A pressure test must use 50 pounds per square inch above the normal operating pressure of a force main.

(c) A temporary valve for pressure testing may be installed near the discharge point of a force main and removed after a test is successfully completed.

(d) A pump isolation valve may be used as an opposite termination point.

(e) A test must involve filling a force main with water.

(f) A pipe must hold the designated test pressure for a minimum of 4.0 hours.

(g) The leakage rate must not exceed 10.0 gallons per inch diameter per mile of pipe per day.

§217.69. Reclaimed Water Facilities.

(a) In accordance with §217.6 of this title (relating to Submittal Requirements and Review Process), the design of a distribution system that will convey reclaimed water to a user must be submitted, reviewed, and approved by the executive director before the distribution system may be used.

(b) A municipality may be the review authority in accordance with §217.8 of this title (relating to Municipality Reviews), and may approve a reclaimed water distribution system.

(c) A distribution system designed to transport Type II reclaimed water, as defined by §210.33(2) of this title (relating to Quality Standards for Using Reclaimed Water), must comply with Subchapter C of this chapter (relating to Conventional Collection Systems), as applicable to the project.

(d) A distribution system designed to transport Type I reclaimed water, as defined by §210.33 of this title must meet the following requirements:

(1) Type I reclaimed water gravity pipes must comply with §§217.53 - 217.55, 217.58, and 217.59 of this title (relating to Pipe Design; Criteria for Laying Pipe; Manholes and Related Structures; Testing Requirements for Manholes; and Lift Station Site Requirements).

(2) A design must prevent pipe and bedding displacement.

(3) The design of a pipe must prevent the deposition of solids in a gravity pipe.

(e) Each appurtenance designed to handle reclaimed water must be identified.

(1) An above-ground hose bib, spigot, or other hand-operated connection is prohibited, excepted in secured areas of a facility that only trained staff has access to.

(2) An underground hose bib must be:

(A) located in locked, below-grade vaults, and clearly labeled "NON-POTABLE WATER"; or

(B) operated only by a special tool in non-lockable, underground service boxes clearly labeled as non-potable water;

(C) purple; and

(D) designed to prevent a connection to a standard water hose.

(3) Storage areas, hose bibs, and faucets must include signs in both English and Spanish reading "NON-POTABLE WATER, DO NOT DRINK" and "El AGUA NO-POTABLE, NO BEBE."

(f) Cross Connection Control and Separation Distances.

(1) A type I reclaimed water pipe must be at least 4.0 feet from a potable water pipe, as measured from the outside surface of each of the respective pipes.

(2) A physical connection between a potable water pipe and a reclaimed water pipe is prohibited.

(3) An appurtenance must prevent any possibility of reclaimed water entering a drinking water system.

(4) Where a 4.0 foot separation distance cannot be achieved, a reclaimed water pipe must meet the following requirements:

(A) If a new Type I reclaimed water pipe is installed parallel to an existing potable water pipe, the reclaimed water pipe must:

(i) maintain a horizontal separation distance of no less than 3.0 feet with a potable water pipe at the same level or above a reclaimed water pipe;

(ii) have a minimum pipe stiffness of 115 pounds per square inch (psi) with compatible joints, or a pressure rating of 150 psi for both pipe and joints;

(iii) is embedded in cement stabilized sand, if parallel to a potable water pipe, is placed in the same benched trench as a reclaimed water pipe; and

(iv) if cement-stabilized sand is used, the sand must:

(I) have a minimum of 10% cement, based on loose dry weight volume;

(II) be a minimum of 6.0 inches above and one quarter of the pipe diameter on either side and below a reclaimed water pipe.

(B) New Type I Reclaimed Water Pipe - Crossing Pipes.

(i) If a new Type I reclaimed water pipe is installed crossing an existing potable water pipe, one segment of a Type I reclaimed water pipe must be centered on a potable water pipe such that the joints of the reclaimed water pipe are equidistant from the center point of the potable water pipe.

(ii) A crossing of the two pipes must be centered between the joints of the potable water pipe.

(C) A Type I reclaimed water pipe must have either a pressure rating of 150 psi for both pipe and joints or a pipe stiffness of at least 115 psi with compatible joints for a minimum distance of 4.0 feet in each direction, as measured perpendicularly from any point on the potable water pipe to the Type I reclaimed water pipe.

(D) The minimum distance between a reclaimed water pipe and any potable water pipe is 6.0 inches.

(E) Any portions of reclaimed water pipe within 4.0 feet of a potable water pipe must be embedded in cement stabilized sand.

(F) The cement stabilized sand must comply with the requirements listed in subparagraph (A) of this paragraph.

(g) Site Selection of Type I Reclaimed Water Pump Stations. A design must comply with §217.59(a) - (c) of this title.

(h) Design of Type I Reclaimed Water Pump Stations. A design must comply with §§217.60(d) and (g), 217.61(d), and 217.62(a) and (c) of this title (relating to Lift Station, Wet Well, and Dry Well Designs; Lift Station Pumps; and Lift Station Pipes), and paragraphs (1) - (3) of this subsection.

(1) Pump Controls.

(A) All electrical equipment must be operable during a 100-year flood event and be protected from potential flooding from a wet well.

(B) Motor control centers must be mounted on a 4.0 inch tall housekeeping pad.

(2) Pumps.

(A) A pump support must prevent movement or vibration during operation.

(B) A submersible pump must use a rail-type pump support incorporating manufacturer-approved mechanisms designed to allow an operator to remove and replace any single pump without first entering or dewatering the wet well.

(C) Submersible pump rails and lifting chains must be made of a material that is equivalent to Series 300 stainless steel at minimum.

(3) Pump Station Valves.

(A) The discharge side of each pump must include a check valve followed by a full-closing isolation valve.

(B) Check valves must be swing type with an external lever.

(C) All valve types other than rising stem gate valves must include a position indicator to show their open or closed position.

(i) Force Main Pipe for Type I Reclaimed Water. A force main pipe for Type I reclaimed water must comply with sections §§217.54, 217.64, 217.65, 217.67(a) - (c) and (e), and 217.68 of this title (relating to Materials for Force Main Pipes; Force Main Joints; Force Main Design; and Force Main Testing) and the following:

(1) A valve casing for an underground isolation valve must include "REUSE" or "NPW" cast into its lid.

(2) A force main pipe must be purple in color or contained in an 8.0 millimeter purple polyethylene sleeve conforming to American Water Works Association C105, Class C and in-line isolation valves for reuse pipes must open clockwise to distinguish them from potable water isolation valves.

§217.70. Storage Tanks for Reclaimed Water.
Ground level storage tanks and elevated storage tanks for reclaimed water must be designed, installed, and constructed in accordance with the American Water Works Association standards with reference to materials and construction practices, except for health-based standards strictly related to potable water storage and contact practices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER D. ALTERNATIVE COLLECTION SYSTEMS

30 TAC §§217.91 - 217.100

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC, §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.91. Edwards Aquifer.
An owner who plans to install an alternative wastewater collection system located over the recharge zone of the Edwards Aquifer must design

and install the system in accordance with Chapter 213 of this title (relating to Edwards Aquifer) in addition to these rules.

§217.92. Component Sizing.

(a) The components of an alternative collection system must be sized based on existing flow data from a similar system and service area, if such data is available.

(b) If flow data from a similar service area with a conventional wastewater collection system is used, the report must include the expected effects of inflow and infiltration on the peak flow of the system.

(c) Design and construction of an alternative wastewater collection system must minimize excess flows from inflow and infiltration.

(d) Roof, street, or other type of drain that permit entrance of storm water into a wastewater collection system is prohibited.

(e) In the absence of existing data, the sizing of on-site components in an alternative wastewater collection system must use Figure: 30 TAC §217.32(a)(3), Table B.1 of this title (relating to Organic Loadings and Flows), in conjunction with the following equation:
Figure: 30 TAC §217.92(e)

(f) Design of the off-site components must be based on the maximum flow rate expected, calculated using the following equation:
Figure: 30 TAC §217.92(f)

(1) An equivalent dwelling unit (EDU) is assumed to have an occupancy of 3.5 people. For EDU population greater than 3.5, the following equation must be used:
Figure: 30 TAC §217.92(f)(1)

(2) The safety factor, "B", may be adjusted if higher wastewater flows are anticipated. A discharge from commercial or institutional dischargers must be measured directly or calculated under this subsection.

§217.93. General Requirements.

(a) Except where specifically stated in this subchapter, the design of an alternative wastewater collection system must comply with the applicable requirements of Subchapter C of this chapter (relating to Conventional Collection Systems).

(b) An owner shall obtain from an engineer:

(1) an operation and maintenance manual covering the recommended operating procedures and maintenance practices for the alternative collection system; and

(2) as-built drawings indicating the location of all on-site components of the alternative wastewater collection system.

(c) An owner shall certify by letter to the executive director that the requirements in subsection (b) of this section have been met. The letter must include the permit number and name(s) of the owner(s) of the associated wastewater treatment facility.

(d) An intersection of three or more collection pipes must have a manhole.

(e) A manhole must not be located in the flow path of a watercourse, or in an area where ponding of surface water is probable.

§217.94. Management.

(a) An alternative collection system must discharge to a wastewater facility permitted by the commission.

(b) An owner of an alternative collection system shall comply with one of the following:

(1) An owner of an alternative wastewater collection system may operate the collection system and contract with another entity permitted by the commission for wastewater treatment; or

(2) An owner of an alternative collection system may contract for management and operation of the collection system with a public or private service provider and a permitted entity for treatment.

(A) A contract must address the responsibility for management and operation of the alternative collection system.

(B) An owner may terminate a contract at any time if the service provider's services are in conflict with the owner's requirements, the wastewater permit, the requirements of this chapter, or other commission requirements.

(c) This section does not apply to grinder pumps or septic tank effluent pumps discharging directly into a conventional collection system.

§217.95. Service Agreements.

(a) An alternative collection system service agreement must be executed between a collection system owner and a property owner that allows for the placement and maintenance of system components located on private property.

(b) The on-site components may be owned by the property owner or the collection system owner. An alternative collection system service agreement must specify which entity is responsible for the proper construction and competent maintenance of the on-site components.

(c) A collection system owner shall submit an alternative collection system service agreement to the executive director with the summary transmittal letter required in §217.6(a) of this title (relating to Submittal Requirements and Review Process).

(d) An alternative collection system service agreement must include the following provisions.

(1) Any existing alternative collection system component or building lateral that is to be incorporated into a new or modified system must be cleaned, inspected, tested, repaired, modified, or replaced, as necessary, to the satisfaction of a collection system owner before connection of the component to the collection system.

(2) A collection system owner shall approve all materials and equipment before incorporating the materials and equipment into any construction or repair of an alternative collection system component.

(3) A collection system owner shall have an engineer inspect and approve the installation of all alternative collection system components before placing the system into service.

(4) A collection system owner shall have access at all reasonable times to inspect on-site alternative collection system components.

(5) A collection system owner has the right to make an emergency repair and perform emergency maintenance to any alternative collection system component, including building laterals and utility-owned on-site collection system components. The cost of any such repair or maintenance may be charged to the owner of the property, as determined in the service agreement.

(6) For an alternative collection system design with any component that uses power, the service agreement must state which entity, the property owner or the collection system owner, is responsibility for power costs.

(7) The ownership and responsibility for the operation and maintenance of an alternative collection system must be agreed to by the collection system owner and the property owner.

(A) An agreement must provide:

(i) to whom the cost of any repair or maintenance will be charged;

(ii) a means to determine the cost of any repair or maintenance;

(iii) a schedule of payment; and

(iv) a methodology to recover costs.

(B) An agreement must grant the collection system owner:

(i) a right to inspect and approve the installation of any pre-treatment unit;

(ii) access for inspection and maintenance; and

(iii) a right to make an emergency repair or perform emergency maintenance when required to protect the integrity or operation of the alternative collection system.

(8) Any on-site component owned by the collection system owner must have an upstream isolation valve.

(9) Any on-site component owned by the owner of the property serviced by a collection system must have a service isolation valve located on a service pipe from an on-site component to the collection system.

(10) A service isolation valve must be accessible at all times through an easement granted by the property owner to the collection system owner.

(11) A collection system owner shall have the ability to collect, transport, and dispose of any residual material.

§217.96. Small Diameter Effluent Sewers.

(a) Interceptor tank design. Septic tanks used as interceptor tanks must be designed and constructed in accordance with §285.32(b)(1) of this title (relating to Septic Tanks).

(1) An outlet of an interceptor tank must have a commercially available effluent filter designed to remove particles larger than 1/16 inch.

(2) The volume of an equivalent dwelling unit (EDU) interceptor tank must be based the criteria in Chapter 285 of this title (relating to On-site Sewage Facilities).

(3) Multiple equivalent dwelling unit (MEDU) interceptor tanks size must be calculated using the following equations:
Figure: 30 TAC §217.96(a)(3)

(b) Pre-treatment units.

(1) An MEDU must provide a method for trapping and removing fats, oils, and grease (FOG) from the wastewater before the wastewater enters an interceptor tank.

(2) A pretreatment unit must have at least two compartments.

(3) The primary compartment volume must equal at least 60% of the total tank volume.

(4) Construction of a grease trap must meet the same requirements as an interceptor tank with regard to water tightness, materials of construction, and access to contents.

(5) FOG retention capacity in pounds must be equal to at least twice the pretreatment unit's flow capacity in gallons per minute. The FOG retention capacity of a trap is the amount of FOG that it can hold before its efficiency drops below 90%.

(6) Plumbing for a pretreatment unit must be designed to prevent wastes other than FOG from entering the pretreatment unit.

(7) A pretreatment unit must be capable of monitoring the sludge and FOG levels.

(c) Service pipe design.

(1) Pipe materials used for service pipe must meet or exceed the performance characteristics of American Society for Testing and Materials (ASTM) D 2241 Class 200 polyvinyl chloride (PVC) pipe.

(2) An interceptor tank must include a pumping unit if its outlet elevation is below the main pipe elevation or the hydraulic grade line in a depressed section of a main pipe.

(3) A service pipe for an EDU or MEDU must be sized to meet the hydraulic requirements of the building, but must be at least 2.0 inches in diameter.

(4) The diameter of a service pipe must be no greater than the collection pipe it is connected to.

(5) A service pipe of an interceptor tank that is subject to periodic backflow must include a check valve that:

(A) is located immediately adjacent to the collection pipe;

(B) is made from a corrosion resistant material; and

(C) provides an unobstructed flow way.

(6) A collection pipe must have in-line odor control devices that are accessible for maintenance.

(d) Collection system design.

(1) Hydraulic design.

(A) A small diameter effluent sewer (SDES) system with open channel flow must use a design depth of flow of 100% of pipe diameter.

(B) The minimum low velocity in a collection pipe must be at least 1.0 foot per second (fps).

(C) The maximum flow velocity in any portion of an SDES system is 8.0 fps without velocity protection and 13.0 fps with velocity protection.

(D) The report must include velocity calculations for each pipe segment.

(E) The elevation of the hydraulic grade-line at peak flow must be lower than an outlet invert of any upstream interceptor tank, unless the interceptor tank has on-site conveyance equipment.

(F) The report must include an analysis for each pipe showing the hydraulic grade line, energy grade line, and ground elevation in relationship to the outlet elevation of each interceptor tank being served by a collection pipe.

(G) The report must include an engineer's analysis of each segment of a variable grade effluent sewer.

(H) Open pipe flow design must use a Manning's "n" value of 0.013.

(I) Pressure flow design must use a Hazen-Williams "C" value of 120.

(J) No pipe in a SDES may be smaller than 2.0 inches in diameter.

(2) Vertical Alignment.

(A) The vertical alignment of an SDES may be variable; however, the overall downhill gradient must allow the pipe to transport the expected peak flow.

(B) Venting must be provided upstream and downstream of pipe segments that are below the hydraulic grade line.

(C) The pipes must have a uniform profile with no abrupt or sharp changes.

(D) Collection pipe must have a cleanout that extends to ground level and terminates in a watertight valve box at:

(i) an upstream terminus;

(ii) a minor junction;

(iii) a change in pipe diameter; and

(iv) intervals of no more than 1,000 feet.

(E) Venting at a collection pipe summit must use a wastewater service air release valve or a combination air release and vacuum valve. The valve must be constructed of corrosion resistant material and located in a vault.

(F) Pipe material used in a collection system must meet the performance requirements of ASTM D 3034 SDR 26 PVC pipe, except for any segment under pressure flow conditions. Under pressure flow conditions, pipe material must meet the performance requirements of ASTM D 2241 Class 200 PVC pipe.

§217.97. Pressure Sewers.

(a) Pumps. A pressure sewer system must include a grinder pump or a septic tank effluent pump (STEP).

(b) Exceptions. Except where this section specifically states otherwise, the requirements of this section apply to both grinder pumps and STEPs.

(c) Service Pipe Requirements.

(1) A pressure sewer service pipe buried less than 30 inches must incorporate a check valve and a fully closing gate or ball valve at the junction of a collection pipe and a service pipe to allow isolation of the service pipe.

(2) A check valve must allow an unencumbered flow when fully open.

(3) A valve must be made of corrosion resistant material and must have a position indicator to show its open and closed position.

(4) The minimum size service pipe for an equivalent dwelling unit (EDU) is 1.25 inches.

(5) The minimum size service pipe for a multiple equivalent dwelling unit (MEDU) is 1.5 inches.

(6) A junction to collection pipes must be made with a tee or service saddle and may use solvent weld fittings.

(7) The diameter of a service pipe must be no greater than the diameter of the collection pipe it connects to.

(8) Material used in service pipe must at least be equivalent to the performance characteristics of American Society for Testing and Materials (ASTM) D 2241 Class 200 polyvinyl chloride (PVC) pipe.

(d) On-Site Mechanical Equipment Requirements.

(1) Pump discharge rates must allow the capacity of the pump and the volume of the wet-well dedicated for flow attenuation and storage to accommodate the expected peak flow.

(2) A single pumping unit may be used for an EDU. The report must include an analysis that justifies the selected pump(s).

(3) An MEDU must be served by at least two pumps capable of pumping the peak flow with the largest pump out of service. The report must include an analysis that justifies the selected pumps.

(4) The calculations in the report must show that lift stations and pump chambers are protected against buoyancy forces.

(5) Control panels for all pumps must be at least 2.0 feet above the ground floor elevation of the structure being served by the equipment.

(6) All pipes and appurtenances within a wet well must be corrosion resistant.

(7) An EDU wet well must have a reserve volume of at least 100 gallons after the activation of a high water alarm level.

(8) The reserve volume of an MEDU wet well must equal the volume accumulated during an average two-hour period or 100 gallons, whichever is greater.

(9) A pump located in a STEP chamber that is integral with an interceptor tank may use the reserve volume of the interceptor tank for the required reserve volume.

(10) A housing that contains mechanical equipment or controls must be watertight if immersion would cause failure.

(11) A wet well must include a visual and audio alarm.

(A) An alarm for an EDU must activate at a specified high water level.

(B) An alarm for an MEDU must activate in the event of unit failure or a high water level.

(12) A control panel or other electrical enclosure must:

(A) be constructed of corrosion resistant materials;

(B) be watertight;

(C) prevent the migration and venting of odor to the panel or enclosure;

(D) prevent the migration and venting of corrosive or explosive gases to the panel or enclosure; and

(E) bear the seal of the Underwriter Laboratory, Inc. or comply with the National Electric Code.

(13) STEP system equipment.

(A) On-site mechanical equipment used in a STEP system may be housed either in an interceptor tank or in a separate stand-alone unit.

(B) A pump used in a STEP system must be located in a hydraulically independent chamber.

(C) A STEP system pump chamber must be hydraulically connected to an interceptor tank to allow the liquid elevation in the pumping chamber to be independent of the liquid elevation in the interceptor tank.

(D) A design that allows a variable liquid elevation in an interceptor tank is prohibited.

(14) Housing for on-site mechanical equipment and any associated control mechanisms must be:

(A) lockable or tamper-resistant;

(B) constructed of corrosion resistant material; and

(C) designed to last at least 50 years.

(15) A vault, chamber, wet-well, or other structure used to contain wastewater must be:

(A) watertight;

(B) able to withstand any expected structural loading;

(C) constructed of corrosion resistant material; and

(D) designed to last at least 50 years.

(e) Discharge Pipe Requirements.

(1) A discharge pipe and connections used to join on-site mechanical equipment to a service pipe must be pressure rated at a minimum of 2.5 times the maximum system design pressure.

(2) Pipe material and valves must be corrosion resistant.

(3) A discharge pipe for a pressure system must include a check valve, a pipe union, and a full closing gate valve or ball valve. A check valve must precede a full closing gate valve.

(4) A ball or gate valve must have a position indicator to show its open and closed positions.

(5) A valve used in an MEDU must be located in a valve box separate from the on-site mechanical equipment.

(f) Collection System Design.

(1) The velocity of wastewater in a grinder pump pressure system main pipe must reach at least 3.0 feet per second at least once per day.

(2) Velocity in a grinder pump main pipe must not be less than 2.0 feet per second or exceed 8.0 feet per second.

(3) The velocity in a STEP system main pipe must reach at least 1.0 foot per second at least once per day.

(4) A collection system head loss calculation must use a Hazen-Williams "C" factor appropriate to the pipe material, but a "C" factor of greater than 140 is prohibited.

(5) The size of the pipe used in a pressure collection system must be at least 1.5 inches in diameter.

(6) Pipe material must have the performance characteristics at least equivalent to ASTM D 2241 Class 200 PVC pipe.

(7) A pipe equal to or greater than 3.0 inches in diameter requires elastomeric pipe joints.

(8) A location where air may accumulate due to a difference in flow conditions requires an air release.

(9) A pumping unit affected by less than full flow conditions must incorporate an anti-siphon device.

(10) An isolation valve must be located at:

(A) each intersection of a collection system main pipe;

(B) both sides of a stream crossing;

(C) both sides of areas of an area of unstable soil; and

(D) maximum intervals of 2,500 feet.

(11) An isolation valve must be:

(A) a resilient seated gate valve or ball valve with a position indicator;

(B) constructed from corrosion resistant materials; and

(C) located in a locked valve box.

(12) Each peak in elevation requires a wastewater air release valve.

(A) A valve orifice must not be less than 0.25 inches in diameter.

(B) An air release valve within 50 feet of a residence or public building must control odor released by its operation.

(13) When intermediate pumping of wastewater is required, the design of a collection system lift station must meet the requirements of Subchapter C of this chapter (relating to Conventional Collection Systems).

§217.98. Vacuum Sewer Systems.

(a) A vacuum sewer system is nonconforming technology. The executive director may review a vacuum sewer in accordance with §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals) and the criteria described in this section.

(b) On-Site Component Design.

(1) A building lateral must be pipe material that is at least equivalent in performance to American Society for Testing and Materials (ASTM) D 2241 Class 160 polyvinyl chloride (PVC) pipe.

(2) A building lateral must use a screened auxiliary vent no less than 4.0 inches in diameter and located no closer than 10.0 feet to a vacuum valve.

(3) A vacuum valve control must be in a tamper-resistant, watertight, and corrosion-resistant structure.

(4) A vacuum valve pit must be watertight to prevent surface and groundwater inflow.

(5) A control mechanism that uses a pressure differential must use atmospheric air supplied by a screened breather vented externally to the equipment housing.

(6) A vacuum valve must have a minimum capacity of 30 gallons per minute.

(7) A service pipe must be a minimum of 3.0 inches in diameter.

(8) A service pipe must have performance characteristics at least equivalent to ASTM D 2241 Class 200 PVC pipe.

(9) A service pipe joint must be made by either vacuum-rated elastomeric gasket or by solvent welding.

(10) At least 5.0 feet of service pipe must be between a vacuum valve and a main pipe.

(11) When there is a vertical profile change in a service pipe, the system must incorporate a minimum of 5.0 feet between the vacuum valve and first profile change and between the last profile change and the main pipe.

(12) A service pipe must have a minimum slope between the vacuum valve and main collection pipe or between vertical profile change that is equal to or greater than:

(A) a 2.0 inch drop; or

(B) a 0.2% slope.

(13) The connection of a service pipe to a main pipe must use a wye and a long radius elbow, oriented so that the invert of the service pipe is higher than the crown of the collection pipe, and must not be made within 6.0 feet of a collection pipe vertical profile change.

(c) Collection System Design.

(1) A pipe in a vacuum sewer must be at least equivalent to the performance characteristics of ASTM D 2241 Class 200 PVC pipe.

(2) A pipe joint must have a vacuum-rated rubber gasket or be solvent welded.

(3) The minimum pipe size in a vacuum sewer must be 4.0 inches in diameter, except for a service pipe that may be 3.0 inches in diameter.

(A) The length of a 4.0 inch diameter vacuum pipe must not exceed 2,000 feet.

(B) The length of a pipe larger than 4.0 inches in diameter must be determined by friction and lift headloss.

(4) The total available head loss from the farthest input point in a system is 18 feet; five feet to operate the vacuum valve and 13 feet available for wastewater transport.

(5) A vacuum sewer system must be laid out in a branched pattern. A pipe must have a saw-tooth profile that slopes toward a vacuum station.

(6) The design of an upgrade mainline transport pipe must reduce the risk of blocking a pipe with trapped sewage.

(7) A collection pipe depressed in order to avoid an obstruction must have a minimum 20 foot segment centered on the obstruction.

(8) An intersection of collection pipes must include a division valve at both sides of a watercourse crossing and both sides of an area of unstable soil, and at intervals of no more than 1,500 feet.

(A) A plug valve or a resilient-seated gate valve, capable of sustaining a vacuum of 24 inches of mercury may be used.

(B) A gauge tap must be provided downstream of a division valve.

(d) Vacuum station design. The vacuum pump capacity must be the greater of the capacities calculated using the following equations, but not less than 150 gallons per minute:
Figure: 30 TAC §217.98(d)

(e) Vacuum Pumps.

(1) A vacuum pump must evacuate the system in less than 180 seconds.

(2) The design must include duplicate pumps, each capable of delivering 100% of required airflow and capable of continuous duty.

(3) A vacuum pump may be either liquid-ring or sliding-vane type. Liquid-ring pumps must be sized at least 15% larger than the necessary vacuum pump capacity.

(4) The transfer pipe must have an electrically or pneumatically controlled plug valve between the collection tank and reservoir to prevent carry over of liquid into the pump.

(f) Duplicate discharge pumps.

(1) Duplicate discharge pumps are required and must have the capacity to deliver the peak flow with one pump out of service.

(2) A discharge pump must be:

(A) designed for vacuum sewage duty;

(B) have equalizing pipes;

(C) capable of passing a 3.0 inch sphere; and

(D) constructed from corrosion resistant material.

(3) A discharge pump must use double mechanical shaft seals and have shut-off valves on both the suction and discharge pipes.

(4) The total dynamic head calculation must include the head attributed to overcoming the vacuum in the collection tank.

(5) The available net positive suction head must be greater than required net positive suction head for the expected vacuum operating range.

(6) The pump suction pipe must be sized 2.0 inches larger than the discharge pipe to prevent wastewater from forming a vortex in the collection tank.

(7) The pump design calculations and pump curves must be included in the report.

(g) Vacuum Reservoir.

(1) A vacuum system that requires a collection tank of 1,600 gallons or more must also include a vacuum reservoir tank with a capacity of at least 400 gallons.

(2) A vacuum pump must be piped to the top of the vacuum reservoir tank.

(3) A vacuum reservoir tank must include internal access for periodic cleaning and inspection.

(4) All main pipes must connect to the collection tank.

(5) The wastewater pump suction pipe must lie at the lowest point on the collection tank and away from the main pipe inlet.

(6) The main pipe must enter at the top of the collection tank with the inlet elbows inside the tank turned at an angle from the pump suction opening.

(7) The collection tank must include probes for liquid level sensing for operation of the discharge pumps.

(8) A vacuum pump must include vacuum switch controls located in the reservoir tank.

(9) The collection tank and low system vacuum must include an alarm for high liquid level.

(h) An owner shall include a description of the alternative collection system's anti-corrosive protection in the report.

§217.99. Testing Requirements.

(a) Components of an alternative wastewater collection system must be tested for water tightness by one of the methods shown in the following table:
Figure: 30 TAC §217.99(a)

(b) Hydrostatic Head Test for Pipe. The total infiltration or exfiltration, as determined by the hydrostatic head test, must not exceed 10 gallons per inch diameter per mile of pipe per 24 hours at a minimum head of 2.0 feet. If the quantity of infiltration or exfiltration exceeds the maximum quantity specified, the owner shall take remedial action to reduce the infiltration or exfiltration to an amount within the specified limits.

(c) Hydrostatic Head Test for Tanks. The test consists of filling the tank to the top and holding the water for 24-hours with no leakage.

(1) The hydrostatic heat test is required before the placement of backfill around a rigid tank.

(2) The test for a tank constructed from flexible or semi-rigid material is required after placement and backfilling according to the manufacturer's recommendations.

(d) Low-Pressure Air Test. The low-pressure air test must conform to the requirements of §217.57 of this title (relating to Testing Requirements for Installation of Gravity Collection System Pipes).

(e) Pressure Pipe Test.

(1) The test pressure must be a minimum of 25 pound per square inch or 1.5 times the maximum pipe design pressure, whichever is larger. The calculations for the maximum allowable leakage must use the following equation:
Figure: 30 TAC §217.99(e)(1)

(2) If the leakage exceeds the maximum amount calculated, the owner shall take remedial action to reduce the leakage to an amount within the allowable limit.

(f) Vacuum Test for a Tank.

(1) The test may begin only after establishing an initial stable vacuum of 4.0 inches of mercury.

(2) The total vacuum loss during a vacuum test must not exceed 1.0 inch loss of mercury vacuum after 5 minutes.

(3) A tank constructed of flexible or semi-rigid material must not exceed the 3% change in tank dimensions in any direction.

(4) If the quantity of vacuum loss or if tank deformation equals or exceeds the maximum quantity specified, then the owner shall take remedial action to reduce the amount of vacuum loss or amount of deformation to comply with this subsection.

§217.100. Termination.

(a) An alternative collection system must terminate at a treatment facility or into a manhole that is part of a conventional collection system.

(b) Release of gases must be controlled by minimizing turbulence in the discharge into a manhole.

(c) A discharge into a manhole that is made up of flows from an alternative collection system and a conventional collection system must have the majority of the flow from the conventional collection system.

(d) An alternative wastewater collection system that discharges at a facility must discharge below the liquid level at the headworks.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. PRELIMINARY TREATMENT UNITS

30 TAC §§217.121 - 217.129

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC, §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.121. Coarse Screening Devices.

(a) A facility must use a coarse screening device, unless stated otherwise in this subchapter.

(b) A coarse screening device must include a bypass channel sized to handle the peak flow of the facility.

(c) A coarse screening device must include a means of diverting flow to the bypass channel.

(d) If the primary channel uses a mechanically cleaned coarse screening device, the bypass channel must have a coarse screening device, either manually or mechanically cleaned.

(e) Location Requirements.

(1) Any enclosed structure that houses a coarse screening device and contains other equipment or an office must have a separate entrance that is separated from the other areas by a gas tight partition.

(2) Each coarse screening device enclosure must have a vent fan capable of providing at least 30 air exchanges per hour if staff entry is allowed.

(3) Each coarse screening device must be readily accessible for maintenance and screenings removal.

(4) Any coarse screening device located 4.0 or more feet below ground level must include equipment capable of lifting the screenings to ground level.

(f) Screen Openings.

(1) For a manually cleaned coarse screen, the bar openings must be at least 0.5 inch but not more than 1.75 inches.

(2) For a mechanically cleaned coarse screen, the bar openings must be at least 0.25 inch but not more than 1.75 inches.

(3) A manually cleaned coarse screen must use a bar rack sloped at least 30 degrees but not more than 60 degrees from horizontal.

(4) A manually cleaned coarse screen must be attached to a horizontal platform that has provisions to drain and temporarily store the screenings.

(g) Hydraulics.

(1) The velocity through the coarse screen bar racks must be at least 1.0 foot per second but not more than 3.0 feet per second at design flow.

(2) The inlet channel for a screening device must minimize deposition of solids.

(3) The flow line of the inlet channel must not exceed 6.0 inches below the invert elevation of the incoming influent.

(h) Corrosion Resistance. A coarse screening device and any related structure must resist the effects of a corrosive environment, including long-term exposure to hydrogen sulfide.

§217.122. Fine Screening Devices.

(a) A fine screen may be used in lieu of a coarse screening device.

(b) A fine screen is any screen with a clear opening less than 0.25 inch.

(c) The use of a fine screen in lieu of a primary sedimentation unit is acceptable only if the design of any downstream treatment unit is based on the amount of five-day biochemical oxygen demand (BOD_5) reduction expected by the fine screen. The BOD_5 reduction percentage must be developed through a study conducted on actual full-scale operation of the proposed fine screen unit.

(d) The report must include the justification for any reduction the size of any treatment unit based on removal of BOD_5 by the use of a fine screen.

(e) An owner who claims a BOD_5 reduction credit must include a sufficient number of fine screen units so that any BOD_5 reduction claimed may occur with the largest fine screen unit out of service.

(f) A design may include a single fine screen unit if the design includes a bypass channel with a coarse screening device to accept flow when the fine screen is out of service. No BOD_5 removal credit is allowed with a single fine screen design.

(g) A fine screen must follow a coarse screening device, unless the manufacturer's recommendations include installation of the unit without a preliminary screening device or evidence of successful use of fine screens in a similar installation is provided.

(h) A facility must be designed to remove fats, oils, and grease from the wastewater before the wastewater reaches the fine screen.

(i) A moving or rotating fine screen must use a continuous cleaning device, such as water jets or wiper blades.

(j) A fine screen unit must automatically convey the screenings to a storage area or processing unit that complies with §217.123 of this title (relating to Screenings and Debris Handling).

(k) A fine screen must meet its manufacturer's recommendation with respect to velocity and head loss through the fine screen.

(l) A fine screen may use a bar rack or perforated plate.

§217.123. Screenings and Debris Handling.

(a) A screening device must have a minimum storage capacity of one-day of screenings and debris.

(b) A container for screenings and debris must have a tight-fitting cover.

(c) A storage area for screenings and debris must drain to the head of the facility and include runoff control.

(d) Any screenings and debris collected must be managed and disposed of in accordance with Chapter 330 of this title (relating to Municipal Solid Waste).

§217.124. Grit Removal Systems.

(a) A wastewater treatment system using anaerobic digestion must have a grit removal system. A grit removal system is optional for all other facilities.

(b) A grit removal system includes those units and processes capable of removing inert, non-biodegradable particles.

(c) A grit removal system must include dual processes capable of operating at the permitted peak flow of the facility.

(d) Each grit removal unit must include:

(1) a bypass channel to accept flow when a grit removal unit is off-line; and

(2) a means of diverting flow to a bypass channel.

§217.125. Grit Chambers.

(a) Horizontal Flow Grit Chambers.

(1) Velocity through a grit chamber must range at least 0.8 feet per second but not more than 1.3 feet per second.

(2) A grit chamber channel must minimize turbulence and provide uniform velocity across the channel.

(3) The channel size must accommodate the grit removal equipment capacity and grit storage.

(b) Aerated Grit Chambers.

(1) An air diffuser and baffle arrangement design must separate the size of grit planned for removal.

(2) The aeration equipment must vary air feed rates along the length of a grit chamber from 3.0 seconds per cubic foot per meter (scfm) per linear foot but not more than 8.0 scfm per linear foot.

(3) A grit chamber must have a hydraulic detention time of at least 3.0 minutes.

(4) A grit chamber must include a grit hopper located under an air diffuser.

(c) Mechanical Grit Chambers.

(1) The velocity through mechanical grit chambers must be no greater than 1.0 foot per second at the design flow.

(2) A channel must include a grit hopper at the side of a tank contiguous to a grit removal mechanism.

(3) An inlet must include baffles to prevent short-circuiting.

(4) Grit removal must be provided by one of the following:

(A) Reciprocating rake;

(B) Screw conveyor; or

(C) Air lift pump.

(d) Cyclonic Degritters.

(1) A cyclonic degritter must prevent entry-to-overflow short circuit.

(2) A cyclonic degritter must include an adjustable apex with a quick disconnect assembly to remove any oversized object.

(3) Detention time in a cyclonic degritter must be at least 1.0 minute at the design flow.

(4) The flow velocity must be at least 1.0 foot per second but not more than 2.0 feet per second at the design flow.

(5) A screening unit must be installed upstream of a cyclonic degritter.

(e) Vortex Grit Chamber.

(1) An inlet channel must include a straight length in order to deliver smooth flow into the vortex grit chamber.

(2) Minimum initial inlet velocity at the peak flow must be at least 2.0 feet per second.

(3) A vortex system must include rotating paddles in the center of a grit chamber and must rotate at a maximum 21 revolutions per minute.

(4) An outlet channel must maintain a constant elevation.

(5) Grit removal from a grit storage chamber must be by pumps specifically designed to handle grit.

§217.126. Grit Handling.

(a) The recycle water and the drainage from a grit washing unit or a grit storage area must return to the head of the facility.

(b) A grit chamber located below ground level must include mechanical grit handling equipment.

(c) Grit must be stored in a container with a tight-fitting cover and must be managed and disposed of in accordance with §217.123 of this title (relating to Screenings and Debris Handling).

§217.127. Pre-Aeration Units.

(a) Pre-aeration may be used for odor control, flocculation of solids, reducing septicity, grease separation, and promoting uniform distribution of solids to clarifiers.

(b) The report must include the basis for any pre-aeration system design.

§217.128. Flow Equalization Basins.

(a) A facility must use a flow equalization basin if:

(1) A facility's total daily influent flow volume occurs during a period of time less than or equal to ten hours of a day for any day of any week;

(2) A facility experiences periods of time when it receives an influent flow of less than 10% of its design capacity for a period of time equal to or greater than 48 hours in any one week; or

(3) At any time that flow equalization is necessary to minimize random or cyclic peaking of organic or hydraulic loadings.

(b) A flow equalization basin must have an upstream screening device.

(c) A flow equalization basin must include an aeration system sized to maintain a dissolved oxygen level of at least 1.0 milligram per liter (mg/l) in the flow equalization basin.

(d) A flow equalization basin must include a mixing system sufficient to prevent solids from settling.

(e) The size of a flow equalization basin must be based on diurnal flow variations and the size and capability downstream process units. The report must include the calculations justifying the size of a flow equalization basin.

(f) For pumped flow to an equalization basin, the effluent from a basin must be controlled by a flow-regulating device capable of maintaining a flow rate that allows downstream process units to operate properly.

(g) For pumped flow from an equalization basin, a variable-speed pump or multiple pumps are required to deliver a constant flow to downstream processing units.

§217.129. Primary Clarifiers.

(a) Inlets.

(1) A primary clarifier inlet must provide uniform flow and stilling.

(2) Vertical flow velocity through an inlet stilling well must not exceed 0.15 feet per second at peak flow.

(3) An inlet distribution channel must not have a dead-end corner and must prevent the settling of solids in the channel.

(4) An inlet structure must allow floating material to enter the clarifier.

(b) Scum removal.

(1) A primary clarifier must have scum baffles and a means of collecting and disposing of scum.

(2) A primary clarifier must discharge scum to a sludge digester or another method of disposal approved by the executive director.

(3) The discharge of scum to any open drying area is prohibited.

(4) A primary clarifier with a design flow equal to or greater than 25,000 gallons per day (gpd) must include a mechanical skimmer.

(5) A primary clarifier with a design flow less than 25,000 gpd may use hydraulic differential skimming, only if the scum pickup is capable of removing scum from the entire operating surface of the clarifier.

(6) A scum pump must be specifically designed for this purpose.

(c) Effluent weirs.

(1) An effluent weir must prevent turbulence or localized high vertical flow velocity in the primary clarifier.

(2) A weir must be located to prevent short circuiting flow through a primary clarifier.

(3) A weir must be adjustable for leveling.

(4) Weir loading, for a facility with a design flow of 1.0 million gallons per day (mgd) or less, must not exceed 20,000 gpd per linear foot of weir length.

(5) Weir loading for a facility with a design flow in excess of 1.0 mgd must not exceed 30,000 gpd peak flow per linear foot of weir length.

(d) Basin sizing.

(1) The surface area of a facility's clarifier(s) determines the proper overflow rates.

(2) The actual clarifier size is based on the larger of the two surface area calculations: peak flow rate or design flow surface loading rate.

(3) The design criteria for primary a clarifier in subparagraphs (A) and (B) of this paragraph are based upon a minimum side water depth of 10.0 feet.

(A) Maximum surface loading:

(i) must not exceed 1800 gpd per square foot at peak flow;

(ii) must not exceed 1,000 gpd per square foot at design flow; and

(iii) does not include recirculation flow.

(B) Detention Time.

(i) Detention time at peak flow must be no less than 54 minutes (0.9 hour).

(ii) Detention time at design flow must at least 108 minutes (1.8 hours).

(iii) Overflow rate and side water depth (SWD) may be adjusted from a minimum of 10 feet a maximum of 18 feet, as long as the detention time remains unchanged.

(iv) The detention time must be based on the effective volume and the overflow rate of a circular or rectangular clarifier.

(I) The effective volume includes all liquid above the sludge blanket.

(II) For a cone bottom tank, the top of the sludge blanket is considered to be at the top of the cone.

(III) For a flat bottom tank, a sludge blanket of 3.0 feet must be allowed for development of maximum return sludge concentration.

(e) SWD. The minimum SWD for primary clarifiers is 10.0 feet.

(f) Freeboard. The walls of a primary clarifier must extend at least 6.0 inches above the surrounding ground surface and must provide a minimum freeboard of 12.0 inches at peak flow.

(g) Drains.

(1) A primary clarifier must have the capability of draining completely to an appropriate point in the facility.

(2) A portable dewatering pump is acceptable for complete dewatering.

(h) Accessibility. A primary clarifier must be accessible to facilitate routine operation and maintenance.

(i) Five-day biochemical oxygen demand (BOD_5) Removal. A design shall be based on no greater than 35% BOD_5 reduction, unless a higher efficiency is justified by a pilot study or data from a similar full-scale operation.

(j) Sludge Transfer.

(1) A primary clarifier unit must include mechanical sludge collection equipment designed to rapidly remove sludge and transfer it for subsequent processing.

(2) A gravity sludge transfer pipe must be at least 8.0 inches in diameter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER F. ACTIVATED SLUDGE SYSTEMS

30 TAC §§217.151 - 217.164

STATUTORY AUTHORITY.

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC, §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.151. Requirements for an Aeration Basin.

(a) Unless designed for advanced nutrient removal, an aeration basin must be designed maintain a minimum dissolved oxygen concentration of 2.0 milligrams per liter (mg/l) throughout the basin at the maximum diurnal organic loading rate determined in §217.32(a)(3) and Figure: 30 TAC §217.32(a)(3) of this title (relating to Organic Loading and Flows).

(b) An activated sludge system may use the volume in aerated influent wastewater channels and aerated mixed liquor transfer channels to meet aeration basin volume requirements, provided the system uses aeration by diffused air and the diffuser depth conforms to the requirements of §217.155(b)(5)(A) of this title (relating to Aeration Equipment Sizing).

(c) The use of a contact stabilization system for nitrification is prohibited.

§217.152. Requirements for Clarifiers.

(a) Inlets.

(1) A clarifier must have an inlet valve or gate.

(2) A clarifier inlet must provide uniform flow and stilling.

(3) A transfer pipe must not trap or entrain air.

(4) Vertical flow velocity through an inlet stilling well must not exceed 0.15 feet per second at peak flow.

(5) An inlet distribution channel must prevent the settling of solids in the channel.

(b) Scum removal.

(1) A clarifier must include scum baffles and a means for the collection and disposal of scum.

(2) Scum collected from a clarifier in a facility using an activated sludge process and an aerated lagoon may be discharged to

an aeration basin or digester, or may use another disposal method that complies with Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(3) Scum from a clarifier in a facility not using an activated sludge process and an aerated lagoon must be discharged to a sludge digester or may use another disposal method that complies with Chapter 312 of this title.

(4) Discharge of scum to an open drying area is prohibited.

(5) A system with a design flow equal to or greater than 10,000 gallons per day (gpd) must use a mechanical skimmer.

(6) A system with a design flow less than 10,000 gpd may use hydraulic differential skimming if the scum pickup is capable of removing scum from the entire operating surface.

(7) A scum pump must be specifically designed to pump scum.

(c) Effluent weirs.

(1) An effluent weir must prevent turbulence or a localized high vertical flow velocity in a clarifier.

(2) A weir must be located a minimum of 6.0 inches from an outer wall or baffle and must prevent the short-circuiting of flow through a clarifier.

(3) A weir must be adjustable to allow leveling of the weir and to provide for minor changes to the water surface elevation in a clarifier.

(4) For a facility with a design flow of less than 1.0 million gallons per day (mgd), the weir loading must not exceed 20,000 gpd at the peak flow per linear foot of weir length.

(5) For a facility with a design flow equal to or greater than 1.0 mgd, the weir loading must not exceed 30,000 gpd at the peak flow per linear foot of weir length.

(6) A circular clarifier must have overflow weirs around the entire perimeter of the clarifier.

(7) A circular clarifier is not limited to the weir overflow rate listed in this subsection.

(d) Sludge Pipes.

(1) Sludge transfer from a clarifier to a subsequent processing unit must not negatively affect treatment efficiency.

(2) A sludge pipe must be a minimum of 4.0 inches in diameter.

(3) The flow velocity in a sludge pipe must be greater than 2.0 feet per second.

(4) Each sludge pipe should have a means to remove any blockage.

(e) Sludge Collection Equipment. A clarifier must include mechanical sludge collecting equipment if it is part of a wastewater treatment facility with a design flow of 10,000 gpd or greater.

(f) Pumped Inflow.

(1) For a facility with pumped inflow, a clarifier must be able to accommodate all anticipated flow without overflow.

(2) A facility must hydraulically accommodate peak flows without adversely affecting the treatment processes.

(g) Side Water Depth (SWD).

(1) The SWD is defined as:

(A) the water depth from the top of the cone in a cone bottom tank to the water surface; or

(B) the water depth from 2.0 feet above the bottom of a flat bottom tank with a hydraulic sludge removal mechanism.

(2) A clarifier with a mechanical sludge collector and a surface area:

(A) equal to or greater than 300 square feet (sf) must have a minimum SWD of 10.0 feet.

(B) less than 300 sf must have a minimum SWD of 8.0 feet.

(3) A clarifier with a hopper bottom must determine the SWD using the following equation:
Figure: 30 TAC §217.152(g)(3)

(4) An SWD computed using Equation F.1 in paragraph (3) of this subsection excludes the hopper portion of a clarifier. The upper third of the hopper portion of a hopper bottom clarifier may be counted as part of the SWD only if the surface area of the hopper bottom clarifier is increased by 15% over the surface area determined from the design surface loading calculated using Table F.2 in Figure: 30 TAC §217.154(c)(1) of this title (relating to Aeration Basin and Clarifier Sizing--Traditional Design), and if an activated sludge facility includes a flow equalization basin. The SWD of a hopper bottom clarifier must never be less than 5.0 feet.

(h) Restrictions on Hopper Bottom Clarifiers.

(1) A hopper bottom clarifier without mechanical sludge collection equipment is prohibited for use in a facility with a maximum flow equal to or greater than 10,000 gpd.

(2) Each hopper cell of a hopper bottom clarifier must have individually controlled sludge removal equipment.

(3) A hopper bottom clarifier must have a smooth wall finish.

(4) A hopper bottom clarifier must have an upper hopper slope of not less than 60 degrees from horizontal.

(i) Restrictions on Short Circuiting. The influent stilling baffle and effluent weir must prevent short circuiting.

(j) Return Sludge Pumping Capacity.

(1) The capacity of a return sludge-pumping unit must be calculated based on the area of an activated sludge clarifier(s), including the stilling well area.

(2) The return sludge pumping capacity is the clarifier underflow rate in gallons per day per square foot (gpd/sf).

(3) A return sludge pumping system must be capable of pumping least 200 gpd/sf but not more than 400 gpd/sf.

(4) The pumping capacity may be controlled via throttling, variable speed drives, or multiple pump operation.

§217.153. Requirements for Both Aeration Basins and Clarifiers.

(a) Construction. Construction material for an aeration basin and a clarifier must resist the effects of a corrosive wastewater environment.

(b) Freeboard.

(1) An aeration basin must have a minimum freeboard of 18 inches at the peak flow.

(2) A clarifier must have a minimum freeboard of 12 inches at the peak flow.

(c) Redundancy and Flow Control.

(1) A facility with a design flow of equal to or greater than 0.4 million gallons per day (mgd) must have a minimum of two aeration basins and two clarifiers, unless the aeration equipment is removable without taking the aeration basin out of service.

(2) Internal and interconnecting pipes must be capable of hydraulically passing the peak flow without overflow and with either the largest clarifier or the largest aeration basin out of service.

(3) Each aeration basin and clarifier must have gates or valves to allow it to be hydraulically isolated.

(4) Each aeration basin and clarifier must have a dedicated means for dewatering.

§217.154. Aeration Basin and Clarifier Sizing--Traditional Design.

(a) This section applies to the traditional approach for sizing an aeration basin and clarifier based on values that have been used historically as standard engineering practice.

(b) Aeration Basin Sizing.

(1) A aeration reactor must be sized using the organic load calculated in §217.32 of this title (relating to Organic Loading and Flows).

(2) Based on this organic load, the aeration basin volume must ensure that the organic loading on the aeration basin does not exceed the rates in the following table:
Figure: 30 TAC §217.154(b)(2)

(3) When identifying the reactor temperature for the process design in Table F.1 in paragraph (2) of this subsection, the average of the lowest consecutive seven-day mean reactor temperature from a similar wastewater treatment facility located within 50 miles of the proposed site must be used.

(c) Clarifier Sizing.

(1) The following table establishes the maximum surface loading rates and the minimum detention times used to determine the size of an activated sludge clarifier:
Figure: 30 TAC §217.154(c)(1)

(2) A clarifier must meet both the detention time and overflow rate criteria.

(A) When calculating overflow rates for a proposed clarifier, sludge recycle flow must not be used in the calculation of the maximum overflow rate, in compliance with Table F.2 in paragraph (1) of this subsection.

(B) When calculating the overflow rate for a proposed clarifier, the surface area of the stilling well may be included as part of the clarifier surface area.

§217.155. Aeration Equipment Sizing.

(a) Oxygen Requirements (O_2R) of wastewater.

(1) An aeration system must be designed to provide a minimum dissolved oxygen concentration in the aeration basin of 2.0 milligrams per liter (mg/l).

(2) Mechanical and diffused aeration systems must supply the O_2R calculated by Equation F.2 located in paragraph (3) of this subsection or use the recommended values presented in Table F.3 in paragraph (3) of this subsection.

(3) The O_2R values in Table F.3 in the following figure use concentrations of 200 mg/l five-day biochemical oxygen demand (BOD_5) and 45 mg/l ammonia-nitrogen (NH_3-N) in Equation F.2 in the following figure:
Figure: 30 TAC §217.155(a)(3)

(b) Diffused Aeration System. An airflow design must be based either paragraph (1) or (2) of this subsection.

(1) Design Airflow Requirements - Default Values. A diffused air system may use the following table to determine the airflow for sizing:
Figure: 30 TAC §217.155(b)(1)

(2) Design Airflow Requirements - Equipment and Site Specific Values. A diffused air system may base calculations of the airflow requirements for the diffused air equipment in accordance with subparagraphs (A) - (D) of this paragraph.

(A) Determine Clean Water Oxygen Transfer Efficiency.

(i) A diffused air system may have a clean water oxygen transfer efficiency greater than 4% only if the full scale diffuser performance data from a certified testing laboratory or sealed by an independent licensed professional engineer demonstrates the diffuser's transfer efficiency.

(ii) A testing laboratory or licensed engineer shall use the oxygen transfer testing methodology described in the most current version of the American Society of Civil Engineers (ASCE) publication, *A Standard for the Measurement of Oxygen Transfer in Clean Water*.

(iii) A diffused air system with a clean water transfer efficiency greater than 18% for a coarse bubble system and greater than 26% for a fine bubble system is considered an innovative technology and is subject to §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(iv) A design for clean water transfer efficiencies obtained at temperatures other than 20 degrees Celcius must be adjusted for a diffused air system to reflect the approximate transfer efficiencies and air requirements under field conditions by using the following equation:
Figure: 30 TAC §217.155(b)(2)(A)(iv)

(B) Determining Wastewater Oxygen Transfer Efficiency (WOTE).

(i) The WOTE must be determined from clean water test data by multiplying the clean water transfer efficiency by 0.65 for a coarse bubble diffuser and by multiplying the clean water transfer efficiency by 0.45 for a fine bubble diffuser.

(ii) The executive director may require additional testing and data to justify actual WOTE for a facility treating wastewater containing greater than 10% industrial wastes.

(C) Determining Required Airflow (RAF). The RAF must be calculated using the following equation to determine the size needed for a diffuser submergence of 12.0 feet. If the diffuser submergence is other than 12.0 feet, a diffused air system must correct the RAF detailed in subparagraph (D) of this paragraph.
Figure: 30 TAC §217.155(b)(2)(C)

(D) Corrections to RAF based on varying diffuser submergence depths. If the diffuser submergence is not 12.0 feet, the design must specify the adjustment of the minimum airflow rate as calculated in subparagraph (C) of this paragraph by multiplying the calculated values by the factors in the following table:

Figure: 30 TAC §217.155(b)(2)(D)

(3) Mixing Requirements for Diffused Air. The air requirements for mixing must be calculated using:

(A) *Design of Municipal Wastewater Treatment Plants*, Chapter 11, a joint publication of the ASCE and the Water Environment Federation, for mixing requirements; or

(B) provide mixing air at a rate greater than or equal to 20 scfm/1000 cf for a coarse bubble diffuser and greater than or equal to 0.12 scfm /square foot (sf) for a fine bubble diffuser.

(4) Blowers and Air Compressors.

(A) A blower and a compressor must have sufficient capacity to provide the required aeration rate for biological treatment and the air requirements of any supplemental unit.

(B) The report must include blower or compressor calculations that show the actual air requirements for the expected temperature range, including both summer and winter conditions, and the impact of the actual site elevation on the air supply.

(C) A diffused air system must have multiple compressors arranged to provide an adjustable air supply to meet the variable organic load on the facility.

(D) The compressors must be capable of handling the maximum design air requirements with the largest single unit out of service.

(E) A blower unit and a compressor unit must restart automatically after a power outage, or a telemetry system or an autodialer with battery backup must notify an operator of any outage.

(F) A design must specify blowers or air compressors with sufficient capacity to handle air intake temperatures that may exceed 100 degrees Fahrenheit (38 degrees Celsius), and pressures that may be less than standard (14.7 pounds per square inch absolute).

(G) A design must specify the capacity of a motor drive necessary to handle air intake temperatures that may be 20 degrees Fahrenheit (-7 degrees Celsius) or less in a location that experiences temperatures below 20 degrees Fahrenheit (-7 degrees Celsius).

(5) Diffuser Systems - Additional Requirements.

(A) Diffuser Submergence.

(i) A submergence depth for any diffuser must meet the minimum depths in the following table, for a new facility:
Figure: 30 TAC §217.155(b)(5)(A)(i)

(ii) A diffuser submergence depth for any modification or expansion of an existing facility may vary from the values in Table F.6 in clause (i) of this subparagraph to match existing air pressure, delivery rate, and hydraulic requirements.

(iii) A submerged depth for a diffuser of less than 7.0 feet is prohibited.

(B) Grit Removal. A facility that uses diffusers and has wastewater with high concentrations of grit must include a grit removal unit upstream of an aeration process or must include multiple trains that may be taken out of service to allow for grit removal.

(C) Aeration System Pipes.

(i) Each diffuser header must include an open/close or throttling type control valve that can withstand the heat of compressed air.

(ii) An air header must be able to withstand temperatures up to 250 degrees F.

(iii) The capacity of an air diffuser system, including pipes and diffusers, must equal 150% of design air requirements.

(iv) The design of an aeration system must minimize head loss. The report must include a hydraulic analysis of the entire air pipe system that quantifies head loss through the pipe system and details the distribution of air from the blowers to the diffusers.

(v) An aeration system may use non-metallic pipes only in the aeration basin, but the pipes must be a minimum of 4.0 feet below the average water surface elevation in the aeration basin.

(c) Mechanical Aeration Systems.

(1) Required Airflow - Equipment and Site Specific Values. The airflow requirements for a mechanical aeration system must be calculated in accordance with subparagraphs (A) and (B) of this paragraph.

(A) Determine Clean Water Oxygen Transfer Efficiency.

(i) The report must include the oxygen transfer efficiency rate for the mechanical equipment.

(ii) Clean water oxygen transfer rate must not exceed 2.0 pounds of oxygen per horsepower-hour, unless justified by full scale performance data conducted by a certified testing laboratory or sealed by an independent, licensed professional engineer using the oxygen transfer testing methodology described in the most current version of the ASCE publication, *A Standard for the Measurement of Oxygen Transfer in Clean Water*.

(iii) A proposed clean water transfer efficiency in excess of 2.0 pounds of oxygen per horsepower-hour is innovative technology and subject to the requirements of §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(B) Determine Wastewater Oxygen Transfer Efficiency.

(i) The report must include data to justify actual wastewater transfer efficiency.

(ii) A design must include an estimate of the wastewater transfer efficiency from the clean water transfer efficiency by multiplying the clean water transfer efficiency by 0.65 for all mechanical aeration equipment for a facility treating greater than 10% industrial wastes.

(2) Mixing Requirements.

(A) A mechanical aeration device must provide sufficient mixing to prevent deposition of mixed liquor suspended solids (MLSS) under any flow condition.

(B) A mechanical aeration device must be capable of re-suspending the MLSS after a shutdown period.

(C) Mechanical aeration devices with channel or basin layout must have a minimum of 100 horsepower per million gallons of aeration basin volume or 0.75 horsepower per thousand cubic feet of aeration basin volume.

(3) Mechanical Components.

(A) Process reliability.

(i) Each basin must include a minimum of two mechanical aeration devices.

(ii) A mechanical aeration device must meet the maximum design requirements for oxygen transfer with the largest single unit out of service.

(iii) A mechanical aeration device must automatically restart after a power outage, or a telemetry system with battery backup or an auto-dialer with battery backup must notify a facility operator or owner.

(B) Operation and maintenance.

(i) A mechanical aeration device must have two speed or variable speed drive units, unless another means of varying the output is provided.

(ii) A mechanical aeration device may use single-speed drive units with timer-controlled operation, if the device also includes an independent means of mixing.

(iii) A facility operator must be able to perform routine maintenance on the aeration equipment without the potential of coming into contact with raw or partially treated wastewater.

(iv) Any bearing, drive motor, or gear reducer must be accessible and be equipped with a splash prevention device.

(v) Any gear reducer must have a drainage system to prevent operator contact with mixed liquor.

§217.156. Sequencing Batch Reactors.

(a) System Sizing and Reliability.

(1) A sequencing batch reactor (SBR) must meet the reliability requirements in §217.155(b) and (c)(3) of this title (relating to Aeration Equipment Sizing), and power source reliability requirements in §217.36 of this title (relating to Emergency Power Requirements).

(2) A SBR must have a minimum decantable volume that is sufficient to pass the design flow without changing cycle times with the largest basin out of service.

(3) A two-basin treatment facility without removable aeration devices is required to have aerated storage of mixed liquor separate from the SBR tank(s).

(4) An SBR with a fixed level decanter must have more than two basins and additional decantable storage volume because of the added settling time before a discharge may occur.

(5) An SBR with fixed decant equipment and decant volumes that do not accommodate the design flow requires an equalization basin.

(6) Organic space loadings must conform to the values in Figure: 30 TAC §217.154(b)(2), Table F.1 of this title (relating to Aeration Basin and Clarifier Sizing--Traditional Design). Maximum space loadings must be below 35 pounds of five-day biochemical oxygen demand ($CBOD_5$) per 1,000 cubic feet of tank volume.

(7) The reactor mixed liquor suspended solids (MLSS) level at the normal operating level must range be at least 3,000 milligrams per liter (mg/l) but not more than 5,000 mg/l.

(8) The minimum depth MLSS during a react phase is 9.0 feet.

(9) The minimum side water depth of a tank is 12 feet.

(10) An SBR must include sludge digestion pursuant to the requirements in Subchapter J of this chapter (relating to Sludge Treatment Units).

(b) Decanter Design.

(1) A decanter design must control the velocity at an inlet port or at the edge of submerged weirs to prevent vortexing, disturbance of the settled sludge, and entry of floating materials.

(2) The entrance velocity to a decanter must not exceed 1.0 foot per second.

(3) A decanter must draw effluent from below the water surface and include a device that excludes scum.

(4) A decanter must maintain a zone of separation between the settled sludge and the decanter of no less than 12 inches.

(5) A decanter must prevent solids from entering the decanter during a react cycle by one the following methods:

(A) Recycle treated effluent to wash out solids trapped in a decanter;

(B) Mechanically close a decanter when it is not in use; or

(C) Fill a decanter with air except during a decant period.

(6) The design of a decanter and related pipes and valves must include freeze protection, if located in a location subject to freezing.

(7) A fixed decanter is prohibited in a basin where simultaneous fill and decant may occur.

(8) For any system of tanks that is fed sequentially, the size of the decant system must accommodate the design flow with a constant cycle time with the largest tank out of service.

(9) An SBR system utilizing more than two basins must allow the decanting of at least two tanks simultaneously.

(10) If units downstream of an SBR are not capable of accepting the peak flowrate of the decanting cycle, flow equalization must be provided between the decanter and the downstream units.

(c) SBR Tank Details.

(1) An SBR requires multiple tanks.

(2) An SBR with two tanks or an SBR system operating with a continuous feed during settling and decanting phases must include influent baffling and physical separation from the decanter.

(3) An elongated tank must be used for an SBR system if influent baffling is required.

(4) An SBR tank must have a minimum freeboard of 18 inches at the maximum liquid level.

(5) An SBR tank must resist buoyant uplift when empty.

(6) Structures using a common wall must be designed to accommodate the stresses generated when one basin is full and an adjacent basin is empty.

(7) Each SBR wall must be watertight.

(8) A sump must be provided in any basin with a flat bottom.

(9) An SBR system must have a dedicated means of transferring sludge between aeration basins.

(10) An SBR system must include a means of scum removal in each aeration basin.

(11) Each SBR tank must include a dewatering system and an overflow to another aeration tank(s) or a storage tank.

(12) At a facility that is not staffed 24-hours each day, a manually operated SBR tank must include a high-level alarm that notifies facility staff, in accordance with §217.161 of this title (relating to Electrical and Instrumentation Systems).

(13) A design must specify the means and frequency for removal of grit and other debris from the basins.

(14) All equipment must be accessible for inspection, maintenance, and operation.

(15) An SBR may use fine screens pursuant to §217.122 of this title (relating to Fine Screening Devices).

(16) An SBR preceded by a primary clarifier may use a comminutor.

(17) An SBR must have a sufficient number of tanks to operate at design flow with one tank out of service.

(d) Aeration and Mixing Equipment.

(1) In addition to the requirements of §217.155 of this title aeration equipment must handle the cyclical operation in an SBR.

(2) The aeration and mixing equipment must not interfere with settling.

(3) The oxygen transfer rate for the aerators at average water depth during a fill cycle must provide a residual of 2.0 mg/l dissolved oxygen in the basin.

(4) A design must specify the blower discharge pressure at the maximum water depth.

(5) A SBR used for biological nutrient removal or reduction must meet the design requirements of §217.163 of this title (relating to Advanced Nutrient Removal).

(6) The design of an SBR must allow for the removal of air diffusers or mechanical aeration devices without dewatering the tank.

(e) Control Systems.

(1) The motor control center must include programmable logic controllers (PLC) with able to operate with limited operator adjustment and be programmed to meet the required effluent limitations for the design loadings.

(2) A hard-wired backup means of operating the SBR is required.

(3) The PLC must include battery backup. A duplicate set of all circuit boards must be kept at the facility.

(4) Adequate controls for the separate operation of each reactor tank must be provided.

(5) A tank level system must include floats or pressure transducers.

(A) A float system must be protected from prevailing winds and freezing.

(B) A bubbler system in a tank level system is prohibited.

(6) The control panel switches must include at least:

(A) Pumps - hand/off/automatic;

(B) Valves - open/closed/automatic;

(C) Blowers or aerators - hand/off/automatic; and

(D) Selector switch for tank(s) - in operation/standby.

(7) The control panel visual displays must include:

(A) Mimic diagram of the process that shows the status and position of any pumps, valves, blowers or aerators, and mixers;

(B) Process cycle and time remaining;

(C) Instantaneous and totalized flow to the facility and of the final discharge;

(D) Tank level gauges or levels;

(E) Sludge pumping rate and duration; and

(F) Airflow rate and totalizer.

(8) The required alarm condition indicators for an annunciator panel must include:

(A) High and low water levels in each tank;

(B) Failure of all automatically operated valves;

(C) Decanter failure;

(D) Blowers, if used - low pressure, high temperature, and failure;

(E) Mechanical aerator, if used - high temperature and failure;

(F) Pump - high pressure and failure; and

(G) Mixers, if used - failure.

§217.157. Membrane Bioreactor Systems.

(a) Applicability.

(1) This section contains criteria for low-pressure, vacuum, and gravity ultrafiltration or microfiltration membrane bioreactors.

(2) Other types of membrane bioreactors (MBRs) are considered innovative technology and are subject to the requirements of §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(b) Performance Standards.

(1) MBR performance standards for conventional pollutants and nutrients are shown in the following table:
Figure: 30 TAC §217.157(b)(1)

(2) An owner may be required to submit a pilot study report or data from a similar facility if a proposed facility is designed to achieve higher quality effluent than the performance standards listed in the table in paragraph (1) of this subsection.

(c) Facility Design.

(1) Pretreatment.

(A) Each MBR system must have fine screening to prevent damage from abrasive particles or fibrous, stringy material.

(i) Fine screens must be rotary drum or traveling band screen with either perforated plate or wire mesh with an opening size of 0.5 - 2.0 millimeter (mm) for hollow fiber systems and tubular systems and 2.0 - 3.0 mm for flat plate systems.

(ii) Bypass of a fine screen must be prevented with either a duplicate fine screen, overflow to a wet well, or an alternative that has been approved by the executive director.

(iii) A fine screen must be designed to prevent overflow at the peak flow.

(iv) Coarse screens followed by fine screens may be used in larger facilities to minimize the complications of fine screening.

(B) The economic feasibility of primary clarification must be evaluated for facilities designed for an average daily flow of 5.0 million gallons per day (mgd) or more. The evaluation must be included in the report.

(C) Oil and grease removal is required if the oil and grease levels in the influent may cause damage to the membranes. The specific detrimental concentration must be determined by the equipment manufacturer. However, influent concentrations of oil and grease equal to or more than 100 milligram per liter (mg/l) must have oil and grease removal.

(D) The necessity of grit removal must be evaluated for a facility that has a collection system with excessive inflow and infiltration. An evaluation must be included in the report.

(2) Biological treatment.

(A) The reactor volume for any biological treatment zone must be determined using rate equations for substrate utilization and biomass growth in a manner similar to determining basin sizes for conventional activated sludge processes.

(B) The design sludge retention time (SRT) for an MBR must be at least 10 days but no more than 25 days.

(C) The design operational range of mixed liquor suspended solids concentration (MLSS) must be:

(i) at least 4,000 mg/l but not more than 10,000 mg/l in the bioreactor; and

(ii) at least 4,000 mg/l but not more than 14,000 mg/l in the membrane tank.

(D) A system designed for an SRT or MLSS outside theses ranges requires a pilot study in compliance with paragraph (8) of this subsection, or data from a similar facility that demonstrates that the design parameters are sustainable and can achieve the expected performance.

(3) Aeration.

(A) An aeration system in a bioreactor must be capable of maintaining dissolved oxygen levels as listed in subparagraph (C) of this paragraph.

(B) A bioreactor aeration system must compensate for a low oxygen transfer efficiency due to the higher MLSS concentrations with a justified alpha value of 0.5 or lower.

(C) The design oxygen concentration range used for sizing aeration systems for treatment zones must be:

(i) Anoxic: not more than 0.5 mg/l;

(ii) Aerobic: at least 1.5 mg/l but not more than 3.0 mg/l; and

(iii) Membranes: at least 2.0 mg/l but not more than 8.0 mg/l.

(D) A design must include oxygen monitoring and an alarm to notify an operator of potential or actual oxygen depravation.

(4) Recycle Rates. Facilities without advanced treatment must be designed with recycle rates sufficient to sustain the design mixed liquor concentrations; typically from 200% to 400% of the facility's influent flow.

(5) Nutrient removal.

(A) A system designed for enhanced nutrient removal must include an isolated tank or baffled zone for anoxic treatment, anaerobic treatment, or both.

(B) Calculations for sizing the reactor volumes must be based on one of these models for nutrient removal:

(i) Bardenpho;

(ii) modified Ludzak-Etinger;

(iii) University of Capetown; or

(iv) an alternative approved by the executive director.

(C) A facility designed for nitrogen or biological nutrient removal must contain a deoxygenation basin, a larger anoxic basin, or another method approved by the executive director of decreasing dissolved oxygen concentration, if the recycled activated sludge is returned to an anoxic or anaerobic basin.

(D) An advanced nutrient removal system must be designed with recycle rates sufficient to sustain the designed mixed liquor concentrations in both the aeration and anoxic basins; typically totaling 600% or more of the influent flow.

(6) Use of Membranes.

(A) Use of a membrane system other than a hollow fiber system, tubular system, or a flat plate system must be considered innovative treatment technology and is subject to §217.7(b)(2) of this title.

(B) Use of a membrane material other than one of the following must be justified in the report:

(i) polyethersulfone (PES);

(ii) polyvinylidene fluoride (PVDF);

(iii) polypropylene (PP);

(iv) polyethylene (PE);

(v) polyvinylpyrrolidone (PVP); or

(vi) chlorinated polyethylene (CPE).

(C) The nominal pore size used in an MBR for microfiltration membranes must be at least 0.10 micrometers (microns) but not more than 0.4 microns.

(D) The nominal pore size used in an MBR for ultrafiltration must be at least 0.02 microns but not more than 0.10 microns.

(E) Any chemical used for cleaning must not adversely affect the membrane material.

(7) Membrane design parameters.

(A) MBRs must be designed for:

(i) An average daily net flux rate of not more than 15 gallons per day per square-foot of membrane area (gfd);

(ii) A peak daily net flux rate equal to or less than 1.25 times the average daily net flux rate; and

(iii) A two-hour peak net flux rate equal to or less than 1.5 times the average daily net flux rate.

(B) The executive director may approve larger net flux rates if the rates are substantiated with a pilot study or data from a similar facility that substantiate the proposed duration, frequency, and recovery time from peak flow.

(C) A system with a peak flow rate that is greater than 2.5 times the average daily flow must use equalization volume, off-line storage, or reserve membrane capacity to accommodate the higher peak flow.

(D) Hollow fiber transmembrane pressure (TMP).

(i) The operational pressure range must be at least 2.0 pounds per square inch (psi) but not more than 10.0 psi.

(ii) The maximum pressure must not exceed 12.0 psi.

(E) Flat plate TMP.

(i) The operational pressure range must be at least 0.3 psi but not more than 3.0 psi.

(ii) The maximum pressure must not exceed 4.5 psi.

(F) Tubular, Out of Basin TMP.

(i) The operational pressure range must be at least 0.5 psi but not more than 5.0 psi.

(ii) The maximum pressure must not exceed 10.0 psi.

(8) Supporting Data. Pilot study reports or data from similar facilities must be provided if a facility is designed to achieve better than the performance standards in Table F.7 in subsection (b)(1) of this section, or outside normal operating parameters defined within this section.

(A) A pilot study must be operated at least 30 days after the initial start-up and acclimation period.

(B) A pilot study must be designed to evaluate the membrane performance during actual operational conditions including flow variations and influent wastewater characteristics.

(C) The treatment and pretreatment processes in a pilot study or similar facility must be equivalent to the proposed facility.

(D) The results of the pilot study must include the following recommendations:

(i) average, peak day, and peak two-hour design net flux rates;

(ii) average and maximum TMP;

(iii) cleaning and backwash intervals;

(iv) expected percent recovery after chemical cleaning;

(v) dissolved oxygen concentrations for reactors and membrane basins;

(vi) MLSS concentrations for reactors and membrane basins;

(vii) SRTs for reactors and membrane basins; and

(viii) expected effluent concentrations of conventional pollutants and nutrients, including the pollutants and nutrients that will be limited or monitored in the facility's wastewater permit.

(9) Redundancy.

(A) A facility must be able to operate at normal operating parameters and conditions for daily average flow with one MBR unit or train out of service.

(B) Acceptable methods of providing redundancy are additional treatment trains, additional treatment units, or storage. Calculations must be included in the report to demonstrate adequate redundancy.

(10) Other components.

(A) Mixers.

(i) Unaerated (deoxygenation, pre/post anoxic, and anaerobic) zones must have submersible mixers or an alternative mixer that has been approved by the executive director.

(ii) Coarse bubble air diffusers may be used for mixing in a pre-anoxic tank.

(B) Scum and Foam Handling.

(i) Scum and foam must not interfere with treatment or overflow a treatment unit.

(ii) Surface wasting of excess mixed liquor or skimmers may be used to control scum and foam.

(iii) Surface wasting may be performed in a aerated basin, a membrane basin, or both.

(C) Cranes and Hoists. A crane, hoist or some other process or mechanism must be provided for periodic cleaning and maintenance.

(11) Disinfection.

(A) An owner may request and the executive director may grant decreased ultraviolet light or chlorine dosing requirements for MBR effluent.

(B) Design for ultraviolet light disinfection for MBR effluent that is based on greater than 75% transmissivity must be justified in the report.

(d) MBR operation.

(1) Membrane cleaning. The following methods may be used:

(A) Air scouring of at least 0.01 standard cubic feet per minute of air per square foot of membrane area but not more than 0.04 standard cubic feet per minute of air per square foot of membrane area;

(B) A mixture of air scouring with mixed liquor jet feed;

(C) Back-flushing;

(D) Relaxation, which is short periods of air scouring without filtration; or

(E) Chemical cleaning.

(2) Operational control parameters.

(A) In-line continuous turbidity monitoring of filtrate from each membrane train or cassette or an equivalent must be provided for operational control and indirect membrane integrity monitoring. If turbidity is used for indirect integrity monitoring, the value that indicates problems must be less than or equal to 1.0 nephelometric turbidity units (NTU).

(B) An owner must follow the manufacturer's recommended frequency for MBR component inspection, testing, and maintenance. The inspection, testing, and maintenance procedures and frequencies must be included in the facility's operation and maintenance manual.

(C) An owner must provide a facility operator access to any specialized tool necessary for the operation or maintenance of an MBR system. A description of all specialized tools and instructions for

their use must be included in a operation and maintenance manual for the facility.

(3) Control instrumentation.

(A) A facility must have the ability to run in full manual mode in case of an automatic control failure; or

(B) An operational backup programmable logic control center (PLC) is required if manual control is not possible.

(e) Chemical Use and Disposal.

(1) The chemicals used in treatment and maintenance must not harm the MBR system or interfere with treatment.

(2) The chemicals, including concentrations and disposal methods, must be identified in the report.

(f) Training.

(1) Key staff must be trained to operate the particular MBR at a facility. They must be familiar with the sequencing and set points of all operations and actions typically controlled by automated systems in order to identify and respond to irregularities.

(2) Proposals for staff training must be included in the report.

(g) Warranty and Bonds.

(1) The membranes must have a warranty of at least five years.

(2) The executive director may require a performance bond that meets the requirements of §217.7(b)(2)(E) of this title.

§217.158. Solids Management.

(a) Solids Recycling and Monitoring.

(1) A return sludge system must operate satisfactorily in all flow conditions.

(2) A monitoring and control system must provide a means to control return and waste sludge flows from each clarifier, to control return sludge flows into each aeration basin, to meter return sludge flows, and to measure waste sludge flows.

(b) Solids Wasting. A design must be adequate to store and process the waste activated sludge under all flow conditions.

(c) Return Activated Sludge (RAS) Pump Design.

(1) A centrifugal sludge pump must have a positive suction head, unless the pump is self-priming.

(2) An airlift pump must allow for cleaning without removal from a basin.

(3) A RAS system must have sufficient pumping units to maintain the maximum design return pumping rate with the largest single pumping unit out of service.

(d) Waste Activated Sludge Pump Design. A waste activated sludge pumping system requires at least two pumping units and must be sized to prevent excessive solids accumulation in the clarifiers.

(e) Sludge Piping System.

(1) The design of a sludge piping system must accommodate cleaning and flushing.

(2) A sludge piping system must be sized for a minimum velocity of 3.0 feet per second at the maximum waste or return rate to prevent solids from settling and must prevent scouring at anticipated normal operating conditions.

(3) A sludge pipe must have a minimum diameter of 4.0 inches.

§217.159. Process Control.

(a) Solids Retention Time Control.

(1) A facility design must include the necessary equipment for a facility operator to control the solids retention time (SRT) in the aeration tanks by wasting a measured volume of surplus activated sludge from either a mixed liquor tank, a sludge re-aeration tank, or the return sludge.

(2) The report and the operating manual must provide the formulas for determining the SRT.

(3) The SRT required for nitrification applies to the aerobic portion of the facility.

(b) Aeration System Control. Aeration control must include the total air supplied and the distribution of air to the aeration tanks.

(1) In order to conserve energy, a facility design may include the ability to adjust the airflow in proportion to the oxygen demand of the facility.

(2) If this adjustable type of airflow control is installed, the aeration equipment must be field adjustable over the entire range of oxygen demands and must maintain solids in suspension.

§217.160. Operability and Maintenance Requirements.

(a) All equipment must operate at the temperature extremes of the facility location and may require enclosures to allow operation of the equipment at all times.

(b) All equipment must be accessible for inspection, maintenance, and operation.

(c) A building that houses equipment must be designed with sufficient clearance and working room to remove and reinstall equipment. The building must be accessible to portable lifting devices or must be equipped with overhead lifting eyes, hoists, trolleys, or cranes to facilitate the safe removal of equipment.

§217.161. Electrical and Instrumentation Systems.

(a) All three-phase motors must have phase failure protection.

(b) Instrumentation and monitoring equipment must have power surge protection.

(c) A facility must conduct fault monitoring and reporting on high wet well, power interruption, disinfection failure, blower failure, and return sludge pumping failure.

(d) For a facility not staffed 24 hours a day, a telemetry with battery back-up or supervisory control and data acquisition system with battery backup must be able to notify an operator of a malfunction at any time.

§217.162. Internal Process Flow Measurement.

A facility with a design flow greater than 0.4 million gallons per day must provide flow measurement of the return sludge and waste sludge discharges for process control.

§217.163. Advanced Nutrient Removal.

(a) A facility designed to provide advanced nutrient removal must specify the process units needed to achieve the permit's effluent limits.

(b) Biological nutrient removal, membrane filtration, sand filtration, or a combination of these processes may be used for advanced nutrient removal without applying for the executive director's

approval under the innovative or nonconforming technology criteria in §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(c) If a BNR unit is proposed, the report must include:

(1) The anticipated food to microorganism ratio in both the anoxic and anaerobic zones;

(2) The volatile fatty acid recycle ratio; and

(3) The design of a foaming control system.

(d) If a chemical addition unit is proposed, it must comply with the requirements in Subchapter K of this chapter (relating to Chemical Disinfection).

(e) A fixed film and filtration process must comply with the requirements of Subchapter G of this chapter (relating to Fixed Film and Filtration Units).

§217.164. Aeration Basin and Clarifier Sizing--Volume-Flux Design Method.

(a) A volume-flux design must size an aeration basin and clarifier on the relationship between the volume flux of solids in the secondary clarifier, the sludge volume index (SVI), and the sludge blanket depth. The following design approach may be used as an alternative to the traditional design approach.

(1) A design may base the aeration tank volume and the clarifier volume on a mixed liquor suspended solids (MLSS) and floc volume (at SVI of 100) for the required minimum solids retention time.

(2) Larger values of MLSS require less aeration tank volume and greater clarifier volume.

(3) By examining a range of values of the MLSS and the floc volume, the most favorable arrangement for a wastewater treatment facility may be selected.

(4) When using the volume-flux design method, the size of an aeration basin and a clarifier must be in accordance with the requirements of this section.

(b) Design approach.

(1) Determine the solids retention time (SRT) needed to meet the permit requirement for five-day carbonaceous biochemical oxygen demand ($CBOD_5$) and ammonia-nitrogen (NH_3-N) effluent limitations.

(2) Select a trial value mixed liquor floc volume, (for example, MLSS at an SVI of 100).

(3) Using the design organic loading rate, the required SRT and yield, and the trial MLSS, determine the aeration tank volume.

(4) Using the trial value of mixed liquor flow volume, determine the clarifier area.

(5) For clarifiers overloaded in thickening at the peak flow, determine the final MLSS during storm flow and the resulting sludge blanket depth.

(6) Observing effluent limitations, determine the side water depth (SWD) and volume of the clarifier.

(7) Repeat the steps in paragraphs (2) - (6) of this subsection at different mixed liquor floc volumes and select the most favorable conditions for the facility design.

(c) Aeration Basin Sizing.

(1) For a facility that does not require nitrification, the minimum SRT is as follows:

(A) For a facility with an effluent $CBOD_5$ monthly average limitation of 20 milligrams per liter (mg/l), the minimum SRT is three days;

(B) For an extended aeration facility with an effluent $CBOD_5$ monthly average limitation of 20 mg/l, the minimum SRT is 22 days;

(C) For a facility with an effluent $CBOD_5$ monthly average limitation less than 20 mg/l, the minimum SRT is 4.5 days; and

(D) For an extended aeration facility with an effluent $CBOD_5$ monthly average limitation of less than 20 mg/l, the minimum SRT is 25 days.

(2) For a facility that requires nitrification, the minimum SRT is based on the winter reactor temperature as set forth in §217.154(a) of this title (relating to Aeration Basin and Clarifier Sizing--Traditional Design) and the values of SRT and net solids production (Y), as listed in Table F.8 in paragraph (3) of this subsection. The maximum $CBOD_5$ monthly average loading limitation for a single-step facility is 50 pounds (lb) $CBOD_5$ per 1,000 cubic feet (cf) and for the first step of two-step facilities is 100 lb CBOD/1,000 cf.

(3) An above-ground steel or fiberglass tank requires 2 degrees Celcius lower minimum operating temperature than a facility utilizing a reinforced concrete tank. A facility must be designed for an MLSS concentration of at least 2,000 mg/l but less than 5,000 mg/l. The net solids production (Y), in the following table includes both coefficients for yield and endogenous respiration:
Figure: 30 TAC §217.164(c)(3)

(4) To calculate the SRT, divide the safety factor by the maximum growth rate as shown in the following equation. The safety factor includes the design factor for the ratio of average to maximum diurnal ammonia loading. A value of 3.0, as recommended in the United States Environmental Protection Agency manual, *Nitrogen Control*, is used in calculating the values in Table F.8 in paragraph (3) of this subsection.
Figure: 30 TAC §217.164(c)(4)

(5) To determine the aeration basin volume, select a trial value of MLSS. The aeration basin volume is calculated as the maximum value from the following equations:
Figure: 30 TAC §217.164(c)(5)

(d) Clarifier Sizing.

(1) A clarifier basin size is based on volume flux from the floc volume of solids entering the clarifier.

(2) Biological solids may occupy different volumes for the same mass of solids as indicated by the SVI.

(3) For purposes of determining overflow rates for clarifier sizing, the design flow and the peak flow must include any return flows from units downstream of the clarifier, including flow from skimmer, thickeners, and filter backwash.

(4) A clarifier must be sized to prevent overloading under any design condition.

(5) The settling velocity of the mixed liquor solids must equal or exceed the two-hour peak overflow rate.

(6) A clarifier must be sized to prevent overloading in the thickening process at the design flow.

(7) The facility's operation and maintenance manual must state the design maximum mixed liquor floc volume.

(8) Dimensions for clarifiers not designed for solids storage (i.e., not overloaded in thickening at the peak flow).

(e) Determine Overflow Rate and Area. The values in Table F.9 in paragraph (2)(I) of this subsection determine the maximum surface loading rates. The MLSS concentration must include the same concentration used for sizing an aeration basin. The design must be based the underflow rate. The design must include calculations for maximum overflow rate for the clarifier at the peak flow (Figure 1: 30 TAC §217.164(e)(2)(I), Table F.9), the aeration basin MLSS concentration, and a selected underflow rate. The area of the clarifier is determined by the following equation:
Figure: 30 TAC §217.164(e)

(1) Determine Volume of a Clarifier. The volume of a clarifier must exceed the values determined from the minimum side wall depth (SWD) in Equation F.9 located in the following figure or the minimum detention time in Equation F.10 located in the following figure:
Figure: 30 TAC §217.164(e)(1)

(2) Dimensions for clarifiers designed for solids storage capabilities. The design of a clarifier that may be overloaded in thickening at the design flow must include the ability to store solids during peak flow events. The design must be based on the values in Figure 1: 30 TAC §217.164(e)(2)(I), Table F.9, Figure 2: 30 TAC §217.164(e)(2)(I), Table F.10, and Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11. The process for designing a clarifier based on this concept is as follows:

(A) Determine the area of a clarifier. The area calculations must be based on the trial MLSS value selected for the sizing of the aeration basin in paragraph (1) of this subsection. The area of a clarifier must exceed the greater of the areas determined by Equation F.11 or Equation F.12 located in the following figure:
Figure: 30 TAC §217.164(e)(2)(A)

(B) The final MLSS value must be the result of the transfer of solids from an aeration tank to a clarifier at the peak flow. A clarifier design must allow for rates of flow that will transfer solids from an aeration tank to a clarifier if the clarifier becomes overloaded in thickening until the mixed liquor solids are reduced to the concentration that no longer causes the overload.

(C) Using Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11 and the selected underflow rate, the MLSS concentration at peak flow is determined using the following equation:
Figure: 30 TAC §217.164(e)(2)(C)

(D) Determine depth of sludge blanket at peak flow. The depth of a sludge blanket is determined by the aeration basin volume, the change in MLSS, the area of the clarifier and the concentration of the blanket solids at the selected underflow rate as shown in the following equation:
Figure: 30 TAC §217.164(e)(2)(D)

(E) Determine the SWD. The SWD of a clarifier is the maximum value resulting from the following conditions:

(i) 10 ft, unless a lower depth is allowed by §217.152(g) of this title (relating to Requirements for Clarifiers);

(ii) 3.0 times the sludge blanket depth; and

(iii) minimum detention time per the following equation:
Figure: 30 TAC §217.164(e)(2)(E)(iii)

(F) Determine clarifier volume. The volume of a clarifier is the area multiplied by the SWD determined in subparagraph (E) of this paragraph.
Figure: 30 TAC §217.164(e)(2)(F)

(G) The formulas for Figure: 30 TAC §217.164(e)(2)(G)(i), Equation F.17; Figure: 30 TAC §217.164(e)(2)(G)(ii), Equation F.18; and Figure 2: 30 TAC §217.164(e)(2)(I), Table F.10; calculate the rates that are equal to the settling velocity of activated sludge at various floc volume concentrations. For values less than 30%, the floc volume is the 30-minute settled volume in an unstirred one-liter graduated cylinder. For values greater than 30%, the sample is diluted so that the settled volume is at least 15% but not more than 30%, and the result multiplied by the dilution factor.

(i) For floc volume less than 40% use the following equation; or
Figure: 30 TAC §217.164(e)(2)(G)(i)

(ii) For floc volume greater than 40%, use the following equation:
Figure: 30 TAC §217.164(e)(2)(G)(ii)

(H) Figure 1: 30 TAC §217.164(e)(2)(I), Table F.9 and Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11 are based on an analysis of the floc volume flux, i.e. floc volume times settling velocity, calculated from Figure: 30 TAC §217.164(e)(2)(G)(i), Equation F.17 and Figure: 30 TAC §217.164(e)(2)(G)(ii), Equation F.18. Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11 is a tabulation of the maximum concentration of the underflow at different underflow rates. The equation for Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11 is as follows:
Figure: 30 TAC §217.164(e)(2)(H)

(I) The following table determines the overflow rate that, along with the underflow rate and MLSS, determines the same floc volume flux as shown in Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11:
Figure 1: 30 TAC §217.164(e)(2)(I)
Figure 2: 30 TAC §217.164(e)(2)(I)
Figure 3: 30 TAC §217.164(e)(2)(I)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER G. FIXED FILM AND FILTRATION UNITS

30 TAC §§217.181 - 217.193

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and pro-

tection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.181. Applicability.

This subchapter establishes the requirements for trickling filters, rotating biological contactors, submerged biological contactors, and filtration systems.

§217.182. Trickling Filters--General Requirements.

(a) Trickling filters are classified according to applied hydraulic loading, including recirculation, in million gallons per day (mgd) per acre of filter media surface area and influent organic loadings in pounds of five-day biochemical oxygen demand (BOD_5) per day per 1,000 cubic feet of filter media, The following factors müst be the basis for the selection of the design hydraulic and organic loadings:

(1) strength of the influent wastewater;

(2) effectiveness of pretreatment;

(3) type of filter media; and

(4) treatment efficiency required.

(b) A trickling filter is classified as:

(1) a roughing filter, which provides at least 50% but not more than 75% removal of soluble BOD_5;

(2) a secondary treatment filter, which provides the required settled effluent BOD_5 and total suspended solids (TSS);

(3) a combined BOD_5 and nitrifying filter, which provides the required settled effluent BOD_5, ammonia-nitrogen (NH_4-N), and TSS; or

(4) a tertiary nitrifying filter, which provides the required settled effluent NH_4-N, if the influent to a trickling filter is a clarified secondary effluent.

(c) The following table lists the hydraulic and organic loadings for different classes of trickling filters:
Figure: 30 TAC §217.182(c)

(d) Pretreatment.

(1) A trickling filter must have upstream preliminary treatment units that:

(A) remove grit, debris, suspended solids, oil, and grease;

(B) particles with a diameter greater than three millimeters; and

(C) control the release of hydrogen sulfide.

(2) A primary clarifier equipped with scum and grease removal devices must precede a rock media trickling filter.

(e) Rock Filter Media.

(1) Materials.

(A) Rock media using crushed rock, slag, or similar material containing more than 5% by weight of pieces with their longest dimension three times greater than the least dimension is prohibited.

(B) Rock media must conform to the following size distribution and grading. Mechanical grading over a vibrating screen with square openings must meet the following:

(i) passing 5.0 inch sieve - 100% by weight;

(ii) retained on 3.0 inch sieve - 95-100% by weight;

(iii) passing 2.0 inch sieve - 0.2% by weight;

(iv) passing 1.0 inch sieve - 0.1% by weight; and

(v) the loss of weight by a 20-cycle sodium test, as described in American Society of Civil Engineers' *Manual of Engineering and Engineering Practice No. 13*, must be less than 10%.

(2) Placement.

(A) Rock media must be at least 4.0 feet deep at the shallowest point.

(B) Dumping rock media directly on a filter is prohibited. Rock media must be placed by hand to a depth of 12 inches above the underdrains. The remainder may be placed by belt conveyor or an equivalent mechanical method.

(C) Crushed rock, slag, and other similar media must be washed and screened or forked to remove clay, organic material, and fines prior to placement.

(D) The placement of any material must not damage the underdrains.

(E) Vehicles and equipment are prohibited from driving over the filter media.

(f) Synthetic (Manufactured or Prefabricated) Media Materials.

(1) Any synthetic media material must be used in accordance with all manufacturer's recommendations.

(2) Synthetic media material may be considered innovative or nonconforming technology and may be subject to §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(A) Suitability. The suitability of synthetic media material must be evaluated based on experience with an installation treating wastewater under similar hydraulic and organic loading conditions. The report must include a relevant case history involving the use of the synthetic media.

(B) Durability. A synthetic media must be insoluble in wastewater and resistant to flaking, spalling, ultraviolet degradation, disintegration, erosion, aging, common acids and alkalis, organic compounds, and biological attack.

(C) Structural Integrity.

(i) A structural design must support the synthetic media, water flowing through or trapped in voids, and the maximum anticipated thickness of the wetted biofilm.

(ii) The synthetic media must support the weight of a person, unless a separate provision is made for maintenance access to the entire top of the trickling filter media and to the distributor.

(D) Placing of Synthetic Media. Modular synthetic media must be installed with the edges matched as nearly as possible to provide consistent hydraulic conditions within the trickling filter.

(g) Filter Dosing.

(1) Suitable flow characteristics must be used for the application of wastewater to a filter by siphon, pump, or gravity discharge from preceding treatment unit.

(2) A filter must be designed to control instantaneous dosing rates under both normal operating conditions and filter-flushing conditions.

(3) The distributor speed and the recirculation rate must be adjusted for the dosing intensity as a compensatory measure under low-flow conditions. The following table provides design ranges of dosing intensity for normal usage periods and for flushing periods:
Figure: 30 TAC §217.182(g)(3)

(4) A design may be based on instantaneous dosing intensity for rotary distributors using the equation in the following figure:
Figure: 30 TAC §217.182(g)(4)

(h) Distribution Equipment.

(1) A design must include a rotary, horizontal, or traveling wastewater distribution system that distributes wastewater uniformly over the entire surface of a filter at the design and flushing dosing intensities.

(2) A design must include filter distributors that operate properly at all anticipated flow rates.

(3) A design must not deviate from the design dosing intensity by more than 10%.

(4) A new trickling filter or upgrade of an existing trickling filter must include electrically driven, variable speed a filter distributor to allow operation at optimum dosing intensity independent of recirculation pumping.

(5) If an existing rectangular trickling filter is retrofitted with rotary distributors, any media that will not be fully wetted must not be considered part of the required effective treatment area.

(6) The center column of a rotary filter distributor must have adequately sized overflow ports to prevent water from reaching the bearings in the center column.

(7) A filter distributor must include cleanout gates on the ends of the arms and an end spray nozzle to wet the edge of the media.

(8) The filter walls must extend at least 12.0 inches above the top of the ends of the distributor arms.

(9) The use of a mercury seal in a distributor of a trickling filter is prohibited in a new facility. If an existing treatment facility is modified, any mercury seal in a trickling filter must be replaced with an oil or mechanical seal.

(10) The minimum clearance between the top of the filter media and the distributing nozzles is 6.0 inches.

(11) Rotary distributors must capable of operating at speeds as low as one revolution per 30 minutes.

(12) A trickling filter with a height or diameter that does not allow distributors to be removed and replaced by a crane must provide jacking columns and pads at the distributor column.

(i) Recirculation.

(1) Low Flow Conditions.

(A) A design must include minimum recirculation during periods of low flow in order to ensure that the biological growth on the filter media remains active at all times.

(B) A design must include the minimum recirculation in the evaluation of the efficiency of a filter, if it is part of a proposed specified continuous recirculation rate.

(C) Minimum flow to the filters must equal to or greater than 1.0 mgd per acre of filter aerial surface and must keep the distribution nozzles properly operating.

(D) The minimum flow rate for a design using hydraulically driven distributors must keep rotary distributors turning at the minimum design rotational velocity.

(E) For a facility designed with a capacity equal to or greater than 0.4 mgd and recirculation for BOD_5 removal, the recirculation system must include variable speed pumps and a method of conveniently measuring the recycle flow rate.

(2) Compensatory Recirculation.

(A) A design must provide recirculation to supplement influent flow if design and flushing dosing intensities are not achieved solely by the control of distributor operation.

(B) Controls for the distributor speed and recycle pumping rate must provide optimum dosing intensity under all anticipated influent flow conditions.

(3) Process Calculations. The report must:

(A) describe a design that propose removal of the remaining organic matter by recirculation;

(B) identify the effect of dilution of the influent on the rate of diffusion of dissolved organic substrates into the biofilm; and

(C) identify the effect of reduced influent concentrations on reaction rates in each section of a filter having first order kinetics.

(4) Maximum Recirculation Rate. A recirculation rate may exceed four times design flow if calculations to justify the higher rate are included in the report.

(5) Configuration.

(A) In a facility with influent that has constant organic loadings, a system must use direct recirculation of unsettled trickling filter effluent.

(B) A design must ensure that the distributor nozzles can handle the recirculated sloughed biofilm.

(C) In a facility with variable influent organic loadings, effluent must recirculate from a final clarifier to either a primary clarifier or a trickling filter to equalize organic loading.

(j) Average Hydraulic Surface Loading.

(1) The report must include calculations of the maximum, design, and minimum area cross-section surface loadings on the filters in terms of million gallons per acre of filter area per day for the initial year and the design year.

(2) The average hydraulic surface loadings of a filter with crushed rock, slag, or similar media must not:

(A) exceed 40 mgd per acre based on design flow, except in roughing applications;

(B) be less than 1.0 mgd per acre; and

(C) be within the ranges specified by the manufacturer.

(k) Underdrain System Design.

(1) A trickling filter must include an underdrain with semi-circular inverts that cover the entire floor.

(2) An underdrain must be vitrified clay or pre-cast reinforced concrete.

(3) An underdrain constructed of half tile is prohibited.

(4) Underdrain inlet openings must have a gross cross-sectional area greater than 15% of a filter's surface area.

(5) A modular synthetic media design must be supported above a filter floor by beams and grating with support and clearances in accordance with the media manufacturer's recommendations.

(l) Underdrain Slopes.

(1) An underdrain and filter effluent channel floor must have a minimum slope of 1%.

(2) An effluent channel must produce a minimum velocity of 2.0 feet per second at design flow rate to a trickling filter.

(3) The floor of a new trickling filter using stackable modular or synthetic media must slope toward a drainage channel on slope of at least 1% and not more than 5%, based on filter size and hydraulic loading.

(m) Passive Ventilation.

(1) The effluent channel and effluent pipe of an underdrain system or a synthetic media support structure must permit free passage of air.

(2) Any drain, channel, or effluent pipe must have a cross-sectional area with not more than 50% of the area submerged at peak flow plus recirculation.

(3) The effluent channels must accommodate the specified flushing hydraulic dosing intensity and allow the possibility of increased hydraulic loading.

(4) A ventilation system may include an extension of an underdrain through a filter sidewall, a ventilation opening through a sidewall, and an effluent discharge conduit designed as a partially full flow pipe or an open channel.

(5) A vent opening through a trickling filter walls must include hydraulic closure to allow flooding of a filter for nuisance organism control.

(6) A passive ventilation design must provide at least 2.5 square feet (sf) of ventilating area per 1,000 lbs of primary effluent BOD_5 per day.

(7) An underdrain system for a rock media filter must provide at least 1.0 sf of ventilating area for every 250 sf of plan area.

(8) The minimum required ventilating area for a synthetic media underdrain is the area recommended by the manufacturer.

(9) The ventilating area must be the greater of 1.0 sf per 175 sf of synthetic media area or 2.6 sf per 1,000 cf of media volume.

(n) Forced Ventilation.

(1) Forced ventilation is required for a trickling filter designed for nitrification, for a trickling filter design with a media depth in excess of 6.0 feet, or for any location where seasonal or diurnal temperatures do not provide sufficient difference between the ambient air and wastewater temperatures to sustain passive ventilation.

(2) A design must specify the minimum airflow for forced ventilation and optimized process performance, and the report must include any calculation associated with this determination.

(3) A down-flow forced ventilation system must include a provision for:

(A) the removal of entrained droplets: or

(B) the return of air containing entrained moisture to the top of a trickling filter; and

(C) a reversible fan or other mechanism to reverse the airflow when a wide temperature difference between the ambient air and wastewater create strong updrafts.

(4) A ventilation fan and the associated controls must withstand flooding of a filter without sustaining damage.

(5) The following equation and the values in Table G.3 determine the minimum airflow rate:
Figure: 30 TAC §217.182(n)(5)

(o) Maintenance.

(1) Cleaning and Sloughing.

(A) A flow distribution device, an underdrain, a channel, and a pipe must allow maintenance, flushing, and drainage.

(B) A trickling system must hydraulically accommodate the specified flushing hydraulic dosing intensity and must facilitate cleaning and rodding of the distributor arms.

(C) A trickling filter system must prevent recirculation of sloughed biomass in pieces larger than the distributor nozzle opening or the filter media voids.

(2) Nuisance Organism Control. A trickling filter system must control nuisance organisms by operation of trickling filters at proper design dosing intensities, with periodic flushing at higher dosing intensities.

(A) Filter Flies.

(i) The structural and hydraulic design of a new trickling filter must enable flooding of the trickling filter for fly control.

(ii) The executive director may approve an alternate method of fly control for a filter that exceeds 6.0 feet in height if the effectiveness of the alternate method is verified at a full-scale installation and documented in the report.

(B) Snails. A trickling filter system must minimize areas where sludge may accumulate. The system must include a low-velocity, open channel between a trickling filter and final clarifier for manual removal of snails.

(3) Corrosion Protection. A design must minimize corrosion and use corrosion-resistant materials for all equipment and construction of a trickling filter, including ventilation equipment and covers.

(p) Flow Measurements. A trickling filter system must include a means to measure the flow to a filter and the recirculation flow.

(q) Odor Control. A trickling filter system must use ventilation with periodic flushing at a higher dosing intensity to minimize potential odor.

(1) Covers.

(A) The executive director may require an owner of a facility with a history of odor complaints to install a cover over a new or modified trickling filter.

(B) A cover must allow access to the entire top of the filter media and to the distributor for maintenance and removal.

(C) A covered trickling filter must have a forced ventilation system with a scrubber or an adsorption column for odor control.

(2) Stripping. A trickling filter with high influent organic loading must have forced ventilation in a down-flow mode to minimize odor. Odorous off-gases may be:

(A) recycled through a trickling filter;

(B) used to ventilate a tertiary nitrifying trickling filter in an up-flow mode;

(C) diffused into an aeration basin; or

(D) treated separately for odor control using a scrubber or an adsorption column.

(r) Final Clarifiers. The size of the final clarifiers for a facility with a trickling filter must allow for the required effluent total suspended solids removal at the maximum influent flow and the maximum recirculation with all pumps in operation.

(s) Report Requirements.

(1) The report must specify the filter efficiency formula used in the design calculations.

(2) The report must include the operating data from any existing trickling filter of similar construction and operation at the facility to justify the projected treatment efficiency, kinetic coefficients, and other design parameters.

(3) The report may include more than one set of applicable design equations to allow crosschecking of predicted treatment efficiency.

§217.183. Nitrifying Trickling Filters--Additional Requirements.

(a) Ventilation. A nitrifying trickling filter must include forced ventilation to distribute airflow throughout the underdrain area. Minimum design airflow rate must provide the greater of:

(1) 50 pounds of oxygen provided per pound of oxygen required at average organic loading, based on stoichiometry; or

(2) 30 pounds of oxygen provided per pound of oxygen required at peak organic loading, based on stoichiometry.

(b) Temperature. The report must justify the temperature used in the design equations. A design may include deep towers or other means to minimize recirculation while providing a design hydraulic dosing intensity that lessens the effects of temperature on removal efficiency.

(c) pH. The report must verify that the design recirculation rates are appropriate for dealing with the effects on pH.

(d) Predation. A nitrifying trickling filter must include a means for effective control of biomass predators, such as snails.

(e) Hydraulic Application Rates. A nitrifying trickling filter must operate at a design dosing intensity of at least 1.47 gallons per minute per square foot and provide operational control of dosing intensity.

(f) Media. Cross-flow synthetic media is required for a new tertiary nitrification filter or for the nitrifying section of a new combined nitrification filter.

(g) Tertiary Nitrification Filters. A trickling filter treating influent that has a five-day biochemical oxygen demand (BOD_5) to total Kjeldahl nitrogen (TKN) ratio of equal to or greater than ($\geq$) 1.0 and soluble BOD_5 of less than or equal to ($\leq$) 12 milligrams per liter (mg/l) is a tertiary nitrification filter.

(1) Design Justification. The report must include process design calculations and selection criteria of kinetic coefficients for a tertiary nitrifying filter and must be justified by operating data from any existing trickling filter of similar construction and operation.

(2) Media biotowers. A tertiary nitrifying filter design must minimize pH depression due to recirculation and by control of influent instantaneous application rates, by means other than compensatory recirculation. A tertiary nitrifying filter must use either:

(A) tower $\geq$20 feet; or

(B) a series of towers less than 20 feet operating in series if the design includes provisions to readily switch the operating sequence of the filters.

(h) Combined BOD_5 and Nitrification Filters. A trickling filter intended to perform nitrification and treating influent having a BOD_5 to TKN ratio of (1.0 or soluble BOD_5 of (12 mg/l is a combined BOD_5/nitrification filter.

(1) Design Justification. The report must justify the projected treatment efficiency and other design parameters by including operating data from any existing trickling filter of similar construction and operation.

(2) BOD_5 Removal Requirements. A combined BOD_5 and nitrification filter must achieve effluent total BOD_5 of $\leq$15 mg/l. The design must not take credit for nitrification in sections of the filter having soluble BOD_5 of $\leq$20 mg/l.

(3) Recirculation. A combined nitrification filter design must enable a high recirculation rate with turndown capability.

§217.184. Dual Treatment Using Trickling Filters.

(a) Classification. A trickling filter or other attached-growth treatment unit in series with a suspended-growth process is considered a dual treatment process that is classified as one of the following:

(1) Activated Biological Filter (ABF) System. An ABF consists of a tricking filter and a final clarifier. An ABF system recirculates settled solids from the final clarifier through the trickling filter with no separate aeration basin or solids contact basin.

(2) Trickling Filter/Solids Contact (TF/SC) System. A TF/SC system consists of a trickling filter sized to remove the majority of the soluble five-day biochemical oxygen demand (BOD_5), followed by an aerated solids contact basin sized to provide polishing and improved sludge settleability, followed by a final clarifier. A TF/SC system recirculates activated sludge to a solids contact basin. The design may include a sludge re-aeration basin.

(3) Roughing Filter/Activated Sludge (RF/AS) System. A RF/AS system consists of a trickling filter sized to perform primary treatment, followed by an aeration basin sized to remove the majority of the soluble BOD_5, followed by a final clarifier. A RF/AS system circulates activated sludge to the aeration basin.

(4) Activated Biological Filter/Activated Sludge (ABF/AS) System. An ABF/AS system consists of a trickling filter sized to perform primary treatment, followed by an aeration basin sized to remove the majority of the soluble BOD_5, followed by a final clarifier. An ABF/AS system recirculates activated sludge to the trickling filter.

(5) Trickling Filter/Activated Sludge (TF/AS) System. A TF/AS system consists of a trickling filter sized to perform roughing and concentration dampening, followed by an intermediate clarifier, followed by an aeration basin sized to remove the majority of the soluble BOD_5, followed by a final clarifier. A TF/AS system circulates activated sludge to the aeration basin.

(b) Process Design.

(1) Attached and suspended growth sub-processes in a dual system must be designed in an integrated process that includes the effluent quality from the first stage in determining the design basis of the second stage.

(2) A design must include an estimate of the performance of the second stage of a dual system using data from existing similar installations or applicable pilot studies.

(3) For a treatment process design in which activated sludge is recycled to first-stage trickling filters, the design must not include the reduction of oxygen demand to the second-stage aeration basin because of sludge recirculation to the trickling filters.

(4) A design may include estimates of the applicable design equations and methodology used for a single stage process.

(c) Treatment Unit Design. The detailed design of a suspended and attached growth system must include all of the features and operational capabilities required for the same treatment unit used for single-process treatment, as well as the following items:

(1) Pretreatment. Pretreatment of a dual system must conform to requirements for a first-stage process.

(2) Snail Control. A dual system must include a low-velocity channel between the first stage and second stage treatment units for control of snails.

(3) Return sludge.

(A) A dual system that includes recirculation of activated sludge or sloughing to trickling filters must prevent recirculation of pieces larger than will pass through the distributor nozzles or the filter media voids.

(B) The trickling filters in a dual system that recirculates sludge to the trickling filters must be high-rate, vertical flow, and fully corrugated media.

(C) Sludge must be incorporated into influent prior to application to trickling filters, and must be incorporated into the effluent from first-stage processes prior to being introduced into second-stage aeration basins.

(4) Aeration. An aeration system for second-stage treatment units in a dual system not designed for nitrification must transfer at least 1.2 pounds of oxygen per pound of first stage effluent BOD_5 per day. An aeration system for second-stage treatment units in systems designed for nitrification must transfer sufficient oxygen to meet stoichiometric requirements for:

(A) biomass growth;

(B) respiration for both carbonaceous material oxidation and nitrification; and

(C) oxygen demand due to biomass sloughing events from the first stage.

(5) Sludge Age.

(A) A design of second-stage suspended growth processes must operate in a way that varies the age of the sludge.

(B) The mean cell residence time must be:

(i) at least 1.5 days for the suspended growth process for TF/SC systems; or

(ii) at least 3.0 days if the second process is an activated sludge aeration basin.

(C) A nitrifying dual system must maintain a total combined mean cell residence time in the attached and suspended growth systems of at least 10.0 days with capability to provide at least 6.0 days mean cell residence time in the suspended growth process alone.

(6) Hydraulic Residence Time. A design of second-stage processes must have a minimum hydraulic residence time of:

(A) 0.5 hour if the second process is an aerated solids contact basin; or

(B) 3.0 hours if the second process is an activated sludge aeration basin.

(7) Nitrification Design. A design for nitrification using dual treatment processes must include:

(A) a sludge re-aeration basin if the second process is an aerated solids contact basin; or

(B) an intermediate clarifier if the second process is an activated sludge aeration basin.

§217.185. Rotating Biological Contactors.

(a) Pretreatment.

(1) Pretreatment to remove grit, debris, and excess oil and grease must precede an rotating biological contractor (RBC) unit.

(2) A design may require primary clarifiers, fine screens, or grit removal chambers to control high levels of grease, oil, grit, or other debris in the influent waste stream.

(3) A RBC unit must include pre-aeration if influent has a high hydrogen sulfide concentration.

(b) Enclosures and Ventilation.

(1) An RBC unit must be covered and provide appropriate levels of ventilation.

(2) A cover must have working clearance of at least 30 inches above an RBC unit, unless the cover can be removed with on-site equipment.

(3) Enclosures must be constructed of a corrosion resistant material.

(4) An RBC unit must include:

(A) access doors on each end, and

(B) observation ports with covers at 3.0 foot intervals along the RBC unit.

(c) Media Design.

(1) An RBC unit must provide self-cleaning action for the media.

(2) RBC media must be compatible with the wastewater to be treated.

(3) An RBC design using multiple stages must use low-density media for the first stage.

(d) Design Flexibility. If included in the design of an RBC, the report must include descriptions of the following:

(1) controlled flow to multiple first stages;

(2) alternate flow and staging arrangements;

(3) removable baffles between stages; and

(4) provision for step feed and supplemental aeration.

(e) Tank Configuration. A design must ensure that an RBC tank:

(1) minimizes the zones in which solids will settle out; and

(2) includes tank drains to facilitate removal of any accumulated solids.

(f) Control of Unwanted Growth in the Initial Stages. Chlorine may be added upstream of an RBC system to control the growth of *beggiatoa*.

(g) Maintenance Provisions.

(1) An RBC system designed for 1.0 million gallons per day (mgd) or greater must have two or more process trains consisting of three or more stages in series in each process train.

(2) Each process train must be capable of being removed from service when maintenance or cleaning is required.

(h) Bearing Maintenance. An RBC system's bearings must be easily accessible for inspection and lubrication.

(i) Organic Loading Design Requirements.

(1) A design must be based on the organic loading for an RBC system on total five-day biochemical oxygen demand (BOD_5) in the waste.

(2) The maximum loading rate must not exceed 8.0 pounds of BOD_5 per day per 1,000 square feet (sf) of media in any stage.

(3) A design must require the RBC media area be adjusted to compensate for the effects of the ratio of soluble BOD_5 to total BOD_5.

(4) Allowable organic loading for the entire RBC system must not exceed:

(A) 3.0 lbs of BOD_5 per day per 1,000 sf of media area for facilities required to meet secondary treatment; or

(B) 2.0 lbs of BOD_5 per day per 1,000 sf for a facility required to meet advanced secondary treatment.

(j) Hydraulic Loading Design Requirements. An RBC system must include flow equalization when the peak-to-design flow ratio is higher than 2.5 to 1.0 to prevent loss of fixed growth from the media.

(k) Stages.

(1) An RBC system designed for a BOD_5 removal unit must have at least three stages in series, unless the report justifies a lesser number using operational data from either a full-scale operating facility or pilot unit with an appropriate scale-up factor.

(2) The first stage of an RBC system must include a means of spreading the influent flow evenly across the media.

(l) Drive Systems. An RBC drive system must handle the maximum anticipated media load and may be a variable speed system. An RBC unit may be mechanically driven or air driven.

(1) Mechanical Drive.

(A) A mechanical drive must have a motor and speed control unit capable of maintaining the required revolutions per minute.

(B) A fully assembled spare for each size mechanical drive unit must be on-site.

(2) Air Drive.

(A) Each RBC unit must have air diffusers mounted below the media and off-center from the vertical axis of the RBC unit and must have air cups mounted on the outside of the media to collect the air.

(B) The blowers must provide the capacity to supply adequate airflow for:

(i) each RBC unit;

(ii) double the airflow rate to any one unit while the others are running normally; and

(iii) the required airflow with the largest blower out of service.

(C) The air diffuser pipe to each unit must:

(i) be mounted so that the air diffuser pipe may be removed without draining the tank or without moving the RBC media; and

(ii) include an air control valve to each RBC unit.

(m) Dissolved Oxygen.

(1) An RBC system must maintain a minimum dissolved oxygen concentration of 1.0 milligram per liter in all stages during the maximum organic loading rate.

(2) The executive director may require supplemental aeration.

§217.186. Nitrifying Rotating Biological Contactors.

(a) A rotating biological contractor (RBC) system designed for five-day biochemical oxygen demand (BOD_5) removal and nitrification of domestic wastewater in a single system must include four stages and have a maximum overall organic loading rate of 1.6 pounds of BOD_5/day/1,000 square feet of media.

(b) A nitrifying RBC must be designed to allow chemical addition if the influent pH is below 7.0.

(c) The report must justify the nitrification rate of a system.

(d) A nitrifying RBC system may be subject to the requirements of §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

§217.187. Dual Treatment Utilizing Rotating Biological Contactors.

(a) A rotating biological contactors (RBC) unit may be used in conjunction with other systems.

(b) An RBC system may be used as a "roughing" unit in series with an activated sludge system as described in §217.183 of this title (relating to Nitrifying Trickling Filters--Additional Requirements).

(c) The report must include supporting data, calculations, process descriptions, and vendor information to describe how a proposed system will meet the permitted effluent limitations.

(d) Combined systems may be subject to the requirements of §217.7(b)(2) of this title (relating to Type of Plans and Specifications Approvals).

§217.188. Submerged Biological Contactor.

(a) A submerged biological contactor (SBC) system must be air driven and does not require a cover.

(b) An SBC system requires the same pretreatment as a rotating biological contactor system and must meet the criteria in §217.185 of this title (relating to Rotating Biological Contactors), except as described in paragraphs (1) and (2) of this subsection.

(1) Each SBC unit must include two air headers, one for rotation of the unit and one to provide dissolved oxygen for the biological activity.

(2) The submerged bearings must be sealed to prevent intrusion of the wastewater.

(c) If lubrication is required, an SBC unit must have lubrication access above the water level.

§217.189. Dual Treatment Systems Using Submerged Biological Contactor.

(a) A submerged biological contactor (SBC) unit may be used in conjunction with other systems.

(b) An SBC system may be used as a roughing unit in series with activated sludge as described in §217.183 of this title (relating to Nitrifying Trickling Filters--Additional Requirements).

(c) SBC units may be installed in existing activated sludge basins to create a combination fixed and suspended growth process.

(d) If a dual system employs an SBC unit, the report must include supporting data, calculations, process descriptions, and vendor information to describe how the proposed system will provide the required treatment levels.

(e) These designs may be subject to the requirements of §217.7(b)(2) of this title (relating to Type of Plans and Specifications Approvals).

§217.190. Filtration.

(a) Reasons for Use.

(1) Permit Requirements. A facility with tertiary effluent limitations must use filtration as a unit of operation to supplement suspended solids removal.

(2) Specific Water Quality Requirements. At facility with secondary or advanced secondary effluent limitations may use filtration as a unit of operation to supplement suspended biological floc removal and intermittent filter operation if filters are not necessary to meet permitted effluent limitations.

(b) Redundancy.

(1) A facility using filtration to provide tertiary treatment for a permit requirement must have a minimum of two filter units.

(2) A design must specify the required filter surface area based on peak flow through the filters with the largest filter unit out of service.

(3) If a filter is being provided to polish wastewater for situations where permit compliance does not depend on the use of a filter, such as some cases of reclaimed water usage, one filter is allowed.

(c) Source of Backwash Water. A filtration system must use filtered effluent as the source of backwash water.

(d) Disposition of Backwash Water. A filtration system must return backwash water containing material cleaned from a filter to the head of the facility for processing.

(e) Sequence of Treatment Units.

(1) A final clarifier must precede a filter, in accordance with Subchapter F of this chapter (relating to Activated Sludge Systems).

(2) A filter system may be used in conjunction with a disinfection tank to provide additional detention time, provided a filter is backwashed to the headworks of the facility.

(f) Overload Conditions. A design must prevent effluent or partially treated effluent from overflowing from any filtration unit.

(g) Control of Slime Growth. A filtration system must provide periodic disinfectant in the influent stream to a filter to control slime growth in the filter and backwash storage tank.

§217.191. Additional Requirements for Deep Bed, Intermittently Backwashed, Granular Media Filters.

(a) Application Rates. With one unit out of service, the peak application rate to any deep bed, intermittently backwashed, granular media filtration unit must not exceed twice the design application rate.

(1) Single Media.

(A) The design filtration rate for single media (sand) filters must not exceed three gallons per minute (gpm) per square foot (sf) of media surface.

(B) The maximum filtration run time between backwash periods is 6.0 hours.

(2) Dual Media. The design filtration rate for a dual media (anthracite and sand) filter must not exceed 4.0 gpm/sf of media surface.

(3) Mixed Media. The design filtration rate for mixed media (non-stratified anthracite, sand, garnet, or other materials) must not exceed 5.0 gpm/sf of media surface.

(b) Media Design.

(1) A filter underdrain system must include a graded gravel layer with a minimum depth of 15 inches, or other filter media support material unless a filter media other than gravel is justified in the report.

(2) Uniformity coefficient of media used in a filter must be 1.7 or less.

(3) The particle size distribution for dual and mixed media filters must perform a hydraulic grading of material during backwash that will result in a filter bed with a pore space graded from progressively coarse to fine from the top of the media to the supporting layer.

(4) Media depths for the various filter types must conform to the values in the following table, unless other media depths are justified in the report with an analysis of the backwash rates:
Figure: 30 TAC §217.191(b)(4)

(c) Backwash Systems.

(1) Flowrate and Media Expansion.

(A) A backwash system must allow a media expansion of at least 20%.

(B) A single media filter must provide a minimum backwash flowrate of 6.0 gpm/sf of media area.

(C) A dual and mixed media must provide a minimum backwash rate of 15 gpm/sf of media area.

(D) Backwash times must be at least 10 minutes but not more than 15 minutes, unless the report justifies a different time.

(2) Surge Control.

(A) A wastewater treatment facility that does have flow equalization or other means of surge control must have a backwash tank.

(B) A surge control device must prevent increases in flow greater than 15% of the design flow of the upstream treatment units if backwash is taken directly to the headworks.

(C) A design must be based on calculations that demonstrate the slug effects of backwash water and that demonstrate treatment

capabilities are not diminished with the return of backwash water to the facility headworks.

(D) An enclosed backwash tank must be vented.

(3) Pumps.

(A) Pumps for backwashing filter units must deliver the required rate with the largest pump out of service.

(B) A backup pump must be available on-site.

(C) A valve arrangement for isolating a filter unit for backwashing must be accessible for maintenance.

(D) A backwash system employing automatic controls must include a manual override system.

(4) Supplemental Systems.

(A) A single media filter system must include an air scour system or combination air and water scour system in addition to an up-flow backwash water system.

(B) A dual or mixed media filter system must include either a surface air or water scour system.

(C) Air scour system flowrates must be at least 3.0 standard cubic feet per minute per square foot of media surface area but not more than 5.0 scfm/sf of media surface area.

(D) Water scour system flowrates must be at least 0.5 gpm/sf of media area but not more than 2.0 gpm/sf of media area.

(d) Underdrain System. An underdrain system must provide a uniform distribution for filter backwash without plugging or exceeding the manufacturer's recommendation for maximum headloss.

(e) Tank Design.

(1) The bottom of a wash water collection trough must be a minimum of 6.0 inches above the maximum elevation of the expanded media during backwash.

(2) A wash water trough must have a minimum freeboard of 3.0 inches during the maximum backwash flowrate.

(f) Controls.

(1) The filter operation controls may be manual or automatic.

(2) Control indicators must be visible to a facility operator while adjusting the controls.

(3) An automatically controlled system must include a manual override system.

(4) Each filter unit must have a head loss indicator.

§217.192. Additional Design Requirements for Multi-Compartmented, Low Head, Automatically Backwashed Filters.

(a) Application Rates.

(1) With one unit out of service, the peak application rate to any unit must not exceed twice the design application rate

(2) The report must include manufacturer's recommended filtration rates with test data.

(3) Single Media. A single media filter must have a maximum design filtration rate of 3.0 gallons per minute per square foot of media surface.

(4) Dual Media. A dual media filter must have a maximum design filtration rate of 4.0 gallons per minute per square foot of media surface.

(b) Media Design. Media sizes and depths must correspond to the values in the following figure, unless the report justifies different media sizes and/or depths:
Figure: 30 TAC §217.192(b)

(c) Backwash System.

(1) A backwash system must provide a minimum of 20 gallons per minute per square foot of media being backwashed at a given time.

(2) The backwash duration must last at least 20 seconds for each compartment and must expand the media a minimum of 20% unless the report includes the manufacturer's recommended backwash rates with test data.

(3) The surge control and pumping system requirements must be the same as those detailed in §217.191(d)(2) and (3) of this chapter (relating to Additional Design Requirements for Deep Bed, Intermittently Backwashed, Granular Media Filters).

(d) Traveling Bridge. A traveling bridge mechanism must:

(1) provide support and access to the backwash pumps and equipment;

(2) be constructed of corrosion resistant materials;

(3) have provisions for consistent tracking of the bridge and safe support of the power cords; and

(4) initiate a backwash cycle automatically when a preset head loss through the filter media occurs.

(e) Floating Material Control. A filter system must provide for automatic and regular removal of any floating material from the surface of a filter and return the floating material to the head of the facility for further processing.

§217.193. Alternative Designs for Effluent Polishing.

The executive director shall review processes for tertiary suspended solids removal other than filters as nonconforming technologies subject to the requirements of §217.7(b)(2) of this title (relating to Type of Plans and Specifications Approvals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER H. NATURAL TREATMENT FACILITIES

30 TAC §§217.201 - 217.213

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority

to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.201. Applicability.

This subchapter establishes the minimum design requirements for Imhoff tanks, constructed wetlands, facultative lagoons, aerated and partially aerated lagoons, stabilization lagoons, treated effluent storage lagoons, evaporative lagoon systems, and overland flow processes.

§217.202. Primary and Secondary Treatment Units.

(a) A primary treatment unit may be an aerated lagoon, a partially aerated lagoon, a facultative lagoon, an evaporative lagoon, or an Imhoff tank.

(b) A secondary treatment unit may be a stabilization lagoon, a constructed wetland, an evaporative lagoon, or an overland flow process. A secondary treatment unit may be used for polishing and tertiary treatment.

(c) A treated effluent storage lagoon downstream of the permit sampling location is not considered a treatment unit for the purposes of this chapter.

(d) A secondary treatment unit must be preceded by a primary unit.

§217.203. Design Criteria for Natural Treatment Facilities.

(a) Flow Distribution. This section applies to a constructed wetland, a facultative lagoon, an aerated lagoon, a partially aerated lagoon, a stabilization lagoon, and an overland flow process.

(1) The shape and size of a treatment unit must ensure even distribution of the wastewater flow.

(2) The distribution system for an overland flow process must ensure uniform sheet flow of the wastewater onto and across the overland flow terraces.

(b) Windbreaks and Screening.

(1) If spray irrigation is used in a location where drift presents a risk of contact with the public, a windbreak or vegetative screening must be used.

(2) The use, the type, and the extent of windbreaks or vegetative screening must be approved by the executive director.

(c) Maximum Liner Permeability.

(1) Except as exempted in paragraphs (4) and (5) of this subsection, a constructed wetland, facultative lagoon, earthen aerated lagoon, partially-aerated lagoon, stabilization lagoon, and treated effluent storage lagoon must be constructed with a liner material with a minimum coefficient of permeability of $1x10^{-7}$centimeters per second (cm/sec) with a thickness of 2.0 feet for water depths less than or equal to 8.0 feet and a thickness of 3.0 feet at water depths greater than 8.0 feet.

(2) A liner must extend from the lowest lagoon elevation or lowest constructed wetland elevation up to an elevation of 2.0 feet above normal water elevation in a lagoon or constructed wetland.

(3) The executive director may grant a variance to the liner requirements, in accordance with §217.4 of this title (relating to Variances).

(4) If a lagoon is constructed to store treated wastewater authorized as reclaimed water under Chapter 210 of this title (relating to Reclaimed Water), the lagoon liner must comply with §210.23 of this title (relating to Storage Requirements for Reclaimed Water).

(5) This subsection does not apply to an evaporative lagoon system or an overland flow system. Liner and permeability requirements for these systems are established in §217.208 of this title (relating to Evaporative Lagoons) and §217.209 of this title (related to Constructed Wetlands).

(d) Compliance with the Liner Permeability Requirements. Paragraph (1)(A) - (E) of this subsection provides the minimum criteria for ensuring that the liner's permeability will not exceed that allowed in paragraph (3) of this subsection. The report must include the results of any test required in this subsection.

(1) Using Unmodified In-Situ Soils. If the soils that naturally exist at a proposed lagoon or constructed wetland site restrict the movement of wastewater to a degree equivalent to a liner placed as described in subsection (c)(1) of this section. A design must meet the requirements in subparagraphs (A) - (E) of this paragraph to certify the permeability of the in-situ soil layer to ensure that groundwater and surface water quality are protected.

(A) A minimum of one core sample is required for each 0.25 acres of bottom area for each lagoon or constructed wetland.

(B) Each core sample must be sampled to determine the coefficient of permeability, the percent passing a 200-mesh sieve, the liquid limit value, and the plasticity index value for the soil that is to serve as a liner.

(C) Each core sample test result must show a coefficient of permeability of less than or equal to $1x10^{-7}$ cm/sec, in compliance with subparagraph (B) of this paragraph.

(D) A liner must be constructed in accordance with one of paragraphs (2), (3), or (4) of this subsection if test results indicate that in-situ soils do not exhibit a hydraulic conductivity of $1x10^{-7}$ cm/sec or less.

(E) An in-situ soil may be used as a lagoon liner or constructed wetland liner if the in-situ soil meets all the requirements in subsection (c)(1) of this section provided that one layer of excavated in-situ material, with the minimum soil characteristic requirements is placed on scarified subgrade in one 8 inch loose lift compacted to no less than 6 inches at 95% standard proctor density in accordance with American Society For Testing And Materials (ASTM) D 698.

(2) Placed Liners. The soil characteristics of the liner material for a placed liner must comply with subparagraphs (A) - (E) of this paragraph. The tests to determine the soil characteristics must conform to standard methods such as ASTM.

(A) At least 30% of the liner material must pass through a 200 mesh sieve;

(B) The liner material must have a liquid limit greater than 30%;

(C) The liner material must have a plastic index of 15 or greater;

(D) The liner material must be placed in four loose lifts that are each a maximum of 8.0 inches in depth and that are compacted to 95% standard proctor density in accordance with ASTM D 698.

Each lift must be no less than 6.0 inches thick after compaction resulting in a total vertical thickness of at least 24 inches for a liner; and

(E) An in-situ subgrade must be scarified prior to placement of the lowest lift.

(3) Using Amended In-Situ Soils.

(A) A liner may be constructed from amended soils or blended soils made of imported soils and soils excavated from the proposed lagoon site.

(B) Each sample of amended soil must sufficiently decrease the coefficient of permeability to $1x10^{-7}$ cm/sec.

(C) The following samples are required for each liner:

(i) three representative samples from each 6,700 cubic feet of amended soil:

(ii) one field permeability test; and

(iii) one laboratory permeability test.

(D) Each of the permeability tests must verify that the coefficient of permeability is equal to or less than $1x10^{-7}$ cm/sec.

(E) When soil permeability is decreased by amending in-situ soil, the liner thickness throughout the lagoon may be decreased to 6.0 inches, if the liner is placed on scarified subgrade in one 8.0 inch loose lift compacted to no less than 6.0 inches at 95% standard proctor density in accordance with ASTM D 698.

(4) Use of a synthetic membrane liner.

(A) A synthetic membrane liner must have a minimum thickness of 40 mils.

(B) A lagoon with a membrane liner must include an underdrain with a leachate detection and collection system.

(C) A liner material must be able to withstand constant sunlight without degrading.

(D) The use of a synthetic membrane liner for a constructed wetland is prohibited.

(e) Embankment Design and Construction. This section applies to a constructed wetland, a facultative lagoon, an aerated lagoon, a partially aerated lagoon, a stabilization lagoon, a treated effluent storage lagoon, and an evaporative lagoon.

(1) The top width of an embankment must be a minimum of 10.0 feet.

(2) The report must justify all inner and outer embankment slope steeper than 1.0 foot vertical to 4.0 feet horizontal from the top of an embankment.

(3) Inner and outer embankment slopes steeper than 1.0 foot vertical to 3.0 feet horizontal are prohibited.

(4) All embankments must be protected against erosion by planting grass, paving, riprapping, or other method approved by the executive director.

(5) All embankments must have a minimum cover of 6.0 inches of topsoil if vegetated.

(f) Disinfection. Chemical or ultraviolet disinfection is not required if a detention time of at least 21 days is provided in the entire, free-water surface, natural treatment unit, in accordance with §309.3(g) of this title (relating to Disinfection).

(g) Sampling Point Significance.

(1) Sizing or design of any treatment unit upstream of the permitted sampling point must not be based on any unit downstream of the permitted sampling point.

(2) A wastewater lagoon downstream of the permitted sampling point is a treated effluent storage lagoon and must comply with the requirements of §210.23 of this title (relating to Storage Requirements for Reclaimed Water).

(h) Storm Water Drainage. A natural treatment system must be constructed to prevent storm water from draining into the system.

§217.204. Imhoff Tanks.

(a) Settling Compartment.

(1) The minimum length-to-width ratio of a settling compartment is 2.0 to 1.0.

(2) A tank inlet must provide uniform flow distribution across the width of a settling compartment.

(3) The septum walls must slope to the center of a compartment at an angle of at least 50 degrees but not more than 60 degrees from horizontal. The septum walls must create an overlap with a continuous slot at least 8.0 inches wide provided between the walls to allow solids to be dispersed into a digestion compartment.

(4) The maximum depth between the normal water level and the plane of a slot is 9.0 feet.

(5) The minimum freeboard above the normal water level is 18 inches.

(6) One of the septum walls must continue past the slot to create a minimum slot overhang of 8.0 inches.

(b) Surface Loading.

(1) The settling compartment overflow loading rate must not exceed 800 gallons per day per square foot of settling compartment area under design flow conditions.

(2) The longitudinal velocity of wastewater through a settling compartment must not exceed 1.0 foot per second under peak flow conditions.

(c) Scum Baffles. An inlet and an outlet of a tank must include scum baffles with a height that meet the water levels at all flows from minimum flow to peak flow.

(d) Gas Vents.

(1) An Imhoff tank must include gas vents with a total area not less than 20% of the total tank surface area.

(2) The width of at least one vent opening must allow maintenance access into a digestion compartment.

(e) Digestion Compartment Loading. The digestion compartment minimum volume must be the greater of 3.5 cubic feet per capita or 20.5 cubic feet per pound of influent five-day biochemical oxygen demand (BOD_5) per day.

(f) Imhoff Tank Dimensions. The total depth of an Imhoff tank must not be less than 15 feet from the water surface at design flow to the bottom of a digestion compartment, not including the first 18 inches of tank depth below the plane of a slot for design digestion volume.

(g) Sludge Removal.

(1) An Imhoff tank must have a sludge withdrawal pipe in a digestion compartment.

(2) A sludge withdrawal pipe must have a minimum diameter of 8.0 inches and include a provision for regular cleaning.

(3) A digestion compartment design must allow a portable pump to remove accumulated sludge.

(h) Odor Management.

(1) The design of an Imhoff tank must minimize the effect of odor from the gas vents.

(2) The executive director may require a bio-filter, a carbon filter, or other odor control device to minimize odor.

(i) Treatment Efficiency.

(1) An Imhoff tank must be followed by at least one subsequent treatment unit.

(2) A design may assume that an Imhoff tank removes 35% of the influent BOD_5.

(3) A design may assume that subsequent treatment units remove 60% of influent total suspended solids.

(j) Material and Construction.

(1) An Imhoff tank must be constructed of reinforced and sealed concrete.

(2) Each component of an Imhoff tank must be resistant to the corrosive effects of a wastewater environment.

§217.205. Facultative Lagoons.

(a) Configuration, Inlets, and Outlets.

(1) The length-to-width ratio of a facultative lagoon must be 3.0 to 1.0, unless other dimensions more suitable to a site are justified in the report.

(2) The flow in a facultative lagoon must be from an inlet along one end of the lagoon to an outlet at the opposite end.

(3) The length of a facultative lagoon must be oriented in the direction of the prevailing winds with the inlet side located such that debris will be blown toward the inlet.

(4) A facultative lagoon must have inlet baffles to collect floatable material when no pre-screening is provided.

(5) An outlet must be adjustable to allow the water level of a facultative lagoon to vary under normal operating conditions.

(b) Depth.

(1) The deeper portion of a facultative lagoon near the inlets must have a minimum depth of 12 feet to provide sludge storage and anaerobic treatment.

(2) The deeper portion must cover at least 25% of the area of a lagoon bottom.

(3) The remainder of a facultative lagoon must have a minimum depth of 8 feet.

(c) Organic loading. The organic loading must not exceed 150 pounds of five-day biochemical oxygen demand (BOD_5) per acre per day based on the surface area of a facultative lagoon.

(d) Odor Control.

(1) A facultative lagoon inlet must be at least 24 inches below the water surface to minimize odor.

(2) An outlet must be at least 12 inches below water surface and not disturb the anaerobic zone.

(3) A facultative lagoon must allow for recirculation from at least 50% to not more than 100% of the design flow.

(4) A facultative lagoon design must prevent siphoning of lagoon contents through a submerged inlet.

(e) Removal efficiency. The design of a facultative lagoon may be based on no more than 50% efficient removal of the influent BOD_5.

§217.206. Aerated Lagoons.

(a) The requirements of this section apply to both completely mixed lagoons and partially mixed lagoons, unless otherwise specified.

(b) An aerated lagoon system must maintain a minimum of 1.6 pounds of oxygen per pound of influent five-day biochemical oxygen demand (BOD_5) with the largest single aeration unit in a lagoon system out of service.

(c) A lagoon system's pipes and valves must allow the flow to be proportionally rerouted.

(d) The aeration equipment must have an alarm that will provide sufficient notification to ensure timely repair to prevent a permit violation. If a facility is not staffed 24 hours per day, the alarm system must be connected to a telemetry system with battery backup.

(e) The BOD_5 removal in each lagoon must be calculated using the following equation:
Figure: 30 TAC §217.206(e)

(1) The value of K for a domestic wastewater in a completely mixed lagoon is 0.50 day^{-1} at 20 degrees Celsius. The value of K for a partially mixed lagoon is 0.28 day^{-1} at 20 degrees Celcius.

(2) The value of K may be adjusted for the minimum monthly water temperature using the following equation:
Figure: 30 TAC §217.206(e)(2)

(3) The value of K may be determined for high-strength or industrial wastewater by either a laboratory study or evaluation of an existing facility treating similar wastewater.

(f) Aeration Equipment.

(1) The size of the aeration equipment in an aerated lagoon must be able to supply the oxygen demand determined in subsection (b) of this section.

(2) For the purpose of sizing aeration equipment, an aerated lagoon must comply with the mechanical and diffused air requirements in §217.155(c) of this title (relating to Aeration Equipment Sizing).

(3) If multiple partially mixed aerated lagoons are used in series, the power input may be reduced as the influent BOD_5 to each lagoon decreases.

(g) Aerated Lagoon Design Requirements. An aerated lagoon system must be designed in accordance with requirements for a wastewater treatment lagoon in §217.203(e) of this title (relating to Design Criteria for Natural Treatment Facilities) and §217.207(d) of this title (relating to Stabilization Lagoons).

(h) Scour Prevention. An earthen-lined aerated lagoon system must include a concrete scour pad in each area of the earthen liner that is subject to a velocity equal to or greater than 1.0 foot per second.

§217.207. Stabilization Lagoons.

(a) Primary treatment must remove the settleable and floatable solids in the influent prior to the wastewater entering a stabilization lagoon.

(b) Odor Management.

(1) A stabilization lagoon must be located so that the local prevailing winds will be toward a less populated area.

(2) If uncontaminated water is available, a stabilization lagoon must be pre-filled to the 2.0 foot level at start-up.

(3) A stabilization lagoon system must include a piping arrangement that allows the recirculation of effluent from a final lagoon to the influent side of an initial stabilization lagoon.

(4) A stabilization lagoon may return recirculation water by surface spray to assist in maintaining aerobic conditions at the lagoon surface and reduce potential odor.

(c) Minimum Number of Wastewater Stabilization Lagoons. A minimum of two stabilization lagoons is required to comply with secondary treatment limits. The stabilization lagoons must be operated in series with each other following the primary treatment unit.

(d) Lagoon Design.

(1) The minimum length-to-width ratio of a stabilization lagoon is 3.0 to 1.0.

(2) Islands, peninsulas, and coves within a stabilization lagoon are prohibited.

(3) A stabilization lagoon must have a depth of at least 3.0 feet but not more than 5.0 feet under design operating conditions.

(4) Inlet and outlet structures must be adjustable to allow for raising and lowering water level a minimum of 6.0 inches to assist in controlling vegetative growth.

(5) A stabilization lagoon must have a minimum of 2.0 feet of freeboard above the normal operating level if the lagoon's normal water surface area is less than 20 acres.

(6) A stabilization lagoon must have a minimum of 3.0 feet of freeboard above the normal operating level if the lagoon's normal water surface area is 20 acres or more.

(e) Pipe and Hydraulic Equipment.

(1) All structures and pipes in a stabilization lagoon must be sized to transport at least 250% of the facility's design flow.

(2) The inlet and outlet structures must be sized to transport the volume of water found in the top 6.0 inches of a lagoon during normal operating depths per day at the available head.

(3) A pipe and recirculation system must allow a stabilization lagoon system to comply with the facility's permitted effluent limitation with any one lagoon of service.

(f) Maximum Surface Organic Loading Rate for Stabilization Lagoons.

(1) The maximum surface organic loading rate on the stabilization lagoon series is 35 pounds (lbs) of five-day biochemical oxygen demand (BOD_5) per acre per day.

(2) The maximum surface organic loading rate on the first lagoon in a stabilization lagoon series is 75 lbs of BOD_5 per acre per day.

(3) The surface organic loading rate applied to the stabilization lagoon series is equal to the total influent organic loading minus any reduction in organic load provided by the primary treatment units.

(g) Inlet and Outlet Structures.

(1) A stabilization lagoon outlet must include removable baffles to prevent floating material from being discharged, and must be constructed to operate correctly as the level of the lagoon surface varies under normal operating conditions.

(2) An outlet must be at least 18 inches but not more than 24 inches below the lagoon surface to control the discharge of algae.

(3) A multipurpose control structure may be used to facilitate a normal operational function such as drawdown, flow distribution, flow depth, measurement, sampling, pump for recirculation and chemical addition; and to minimize the number of construction sites in a lagoon.

(4) A pipe embankment penetration must have a seep water-stop collar.

(5) A stabilization lagoon must have a drainpipe to allow emptying for maintenance and may use a pump as part of a drainage system. If not permanently installed, a temporary pipe suction station must be provided.

§217.208. Evaporative Lagoons.

(a) Design.

(1) If evaporative lagoons are used, a facility must have a minimum of two lagoons.

(2) The primary evaporative lagoon must provide at least 60% of the total surface area of an evaporative lagoon system.

(3) The number and size of evaporative lagoons must provide adequate evaporation for design flow during periods of low evaporation.

(b) Odor Management. An evaporative lagoon must be located so that the local prevailing winds will be toward a less populated area.

(c) Synthetic Membrane Liners.

(1) A synthetic membrane for an evaporative lagoon must be at least 40 mils thick.

(2) A lagoon with a synthetic membrane liner must have an underdrain leak system consisting of at least a leachate collection system and a detection system.

(3) The liner manufacturer's specifications may require proper compaction of soil beneath the liner.

(4) A liner material must withstand constant sunlight without degrading.

(d) Configuration, Depth, and Loading.

(1) An evaporative lagoon may be constructed in a round, square, or rectangular shape. The corners of a square or rectangular shaped evaporative lagoon must be rounded in order to minimize accumulation of floating materials.

(2) The depth of an evaporative lagoon is dependant on its location within the lagoon system.

(A) The maximum operating depth for a primary lagoon is 5.0 feet, but the area around an inlet must be designed for solids deposition according to the criteria in §217.205 of this title (relating to Facultative Lagoons).

(B) The maximum operating depth for a secondary lagoon is 8.0 feet.

(3) Evaporation and Organic Loading.

(A) An evaporation lagoon system must be sized based on the evaporation rate for the site and a maximum allowable organic loading rate.

(B) The evaporation loss must be calculated by using the Penman-Monteith method or a comparable, established method.

(C) An evaporative lagoon system must be sized to account for the influent flows and precipitation from a 25-year frequency, one-year rainfall event in accordance with §309.20(b)(3)(B) of this title (relating to Land Disposal of Sewage Effluent), unless the report includes an alternate method of disposing of the wastewater and the supporting documentation.

(D) The maximum organic loading rate must be calculated based on an evaporative lagoon system that is sized using the evaporation rate as required by subparagraph (C) of this paragraph.

(E) The five-day biochemical oxygen demand (BOD_5) loading on a primary evaporative lagoon must not exceed 150 pounds of BOD_5 per acre of surface area per day.

(e) Embankment. The embankments for an evaporative lagoon must be constructed in accordance with §217.203(e) of this title (relating to Design Criteria for Natural Treatment Facilities).

(f) Inlet and Outlet Structures.

(1) An influent line for an evaporative lagoon must terminate into a manhole located along the embankment edge.

(2) An inlet manhole invert must be a minimum of 6.0 inches above the maximum high water level of a primary evaporative lagoon.

(3) A submerged discharge pipe must extend from a manhole along and anchored to the bottom of an evaporative lagoon.

(4) An inlet discharge pipe must discharge on to concrete apron in a depression near the center of the primary evaporative lagoon to prevent scour.

(A) A concrete apron must be at least 2.0 square feet in surface area, at least 8.0 inches thick, and resistant to the corrosive effects of a wastewater environment.

(B) The report must justify the use of any material other than concrete for a discharge apron.

(5) Inlet and outlet structures for an evaporative lagoon must be constructed in a manner that allows the water surface elevation to be varied during normal operating conditions.

§217.209. Constructed Wetlands.

(a) Types of Constructed Wetlands. A constructed wetland may be a free water surface system or subsurface flow system.

(b) Natural Wetlands. The use of natural wetlands for wastewater treatment is prohibited.

(c) Design.

(1) A constructed wetland must be preceded by primary treatment and may be preceded by secondary treatment.

(2) A primary treatment system must be designed to control odor and algae.

(3) A primary treatment system must produce an effluent quality with no more than 150 milligrams per liter of five-day biochemical oxygen demand to minimize anaerobic conditions and stress on vegetative communities in any subsequent wetland treatment unit.

(4) A treatment facility that use a constructed wetland as the means of complying with a permit effluent limit must be sized and designed to ensure that the permit limitations may be met with any one wetland cell out of service. The report must include water balance calculations and the potential effect of evaporation on the predicted effluent concentrations.

(d) Vegetation. A constructed wetland must have a diverse vegetative community of emergent and floating plants to minimize any adverse impact from potential disease, insect pests, or species-specific toxicity. A constructed wetland may have the following flora:

(1) Emergent plants including:

(A) Scirpus spp. (bulrush);

(B) Sagittaria spp. (arrowhead);

(C) Phragmites spp. (reeds);

(D) Juncus spp. (rushes);

(E) Elecharis spp. (spikerush);

(F) Cyperus spp. (sedges);

(G) Typha spp. (cattails);

(H) Caladium spp. (elephant ear); or

(I) various aquatic grass species (e.g., wild rice).

(2) Floating plants including:

(A) Lemna spp. (duckweed);

(B) Hydrocotyle umbellata spp. (water pennywort);

(C) Limnobium spongia spp. (frogbit);

(D) Nymphaea spp. (water lily);

(E) Wolffia spp. (water meal); or

(F) other appropriate emergent plant species.

(3) The vegetation used in a constructed wetland must be suitable for the local growing conditions. The use of indigenous plants is recommended, if the species have been demonstrated effective in a constructed wetland wastewater environment. The report must identify the plants in the design.

(4) Plans for harvesting aquatic plants from waters in the state must be reviewed with the United States Army Corps of Engineers to determine if regulatory coordination is required.

(5) Gathering seed plants from natural wetlands must minimize any impact on the harvested plant community and the natural wetlands.

(6) The use of any harmful or potentially harmful wetland plant or organism is subject to review by the Texas Parks and Wildlife Department, as required by 31 TAC §§57.111 - 57.118 and §§57.251 - 57.258 (relating to Definitions; General Rules; Exceptions; Health Certification of Harmful or Potentially Harmful Exotic Shellfish; Transportation of Harmful or Potentially Harmful Exotic Species; Exotic Species Transport Invoice; Exotic Species Permit: Application Requirements; Exotic Species Permit Issuance; Definitions; General Provisions; Permit Application; Denial; Renewal; Amendment; Reporting and Recordkeeping; and Prohibited Acts, respectively).

(e) Maintenance activity must not result in a deterioration of water quality.

(1) All herbicides, insecticides, and fertilizers are prohibited in a constructed wetland.

(2) Floating Material Removal.

(A) A constructed wetland must allow the removal of an algal mat or other floating material prior to the effluent entering the wetlands.

(B) A removal mechanism may be a screen, a submerged adjustable inlet, a baffle, or another suitable method. The removal mechanism must be justified in the report.

(C) The removed floating material must be stored and disposed of in a manner that minimizes odor and complies with the requirements of Chapter 330 of this title (relating to Municipal Solid Waste).

(3) A facility operation and maintenance manual for a facility that has a constructed wetland must include detailed description and schedule for maintaining the constructed wetlands.

(f) A wetlands system must be matured and functioning properly before wastewater effluent is processed. The report must include a management and oversight program that specifies construction scheduling, plant species selection, planting practices, and start-up procedures.

(g) Liners.

(1) The liner for a wetland system must comply with the requirements of §217.203(c) of this title (relating to Design Criteria for Natural Treatment Facilities).

(2) A minimum 6.0 inch layer of productive topsoil must be placed above a liner to encourage root penetration.

(h) Berms.

(1) A berm of a constructed wetland must have side slopes no steeper than 3:1.

(2) The interior side slopes must be lined up to 2.0 feet above the normal water level.

(3) The interior side slopes above the normal operational water level and the exterior side slopes must be finished with:

(A) a minimum 6.0 inch productive topsoil layer and vegetated with grass;

(B) a comparable natural erosion control system; or

(C) a synthetic protection system such as paving.

(i) Flood Hazard Analysis. A constructed wetland must be protected from flooding in accordance with the requirements of §217.35 of this title (relating to One Hundred-Year Flood Plain Requirements).

(j) Nitrification. A constructed wetland that provides nitrification is an innovative and nonconforming technology and subject to §217.7(b)(2) of this title (relating to Types of Plans and Specification Approvals).

(k) Allowed Uses. A constructed wetland may be used as a secondary treatment unit, an advanced secondary treatment unit, or for polishing wastewater effluent, but not for primary treatment.

§217.210. Constructed Wetlands--Free Water System (FWS) Design.

(a) A Free Water System (FWS) wetland must be based on a maximum water depth of not greater than 24 inches in emergent vegetation areas at design flow.

(b) Plants.

(1) Emergent plant spacing must be no more than 66 inches on center.

(2) Floating plants are prohibited in an FWS.

(c) Multiple Cells. An FWS wetland must include multiple cells that may be operated independently, allowing an individual cell to be removed from service while maintaining system operations.

(d) System Size. An FWS wetland must be sized to meet permit effluent limits with any single cell removed from service.

(e) Bottom slope.

(1) A FWS wetland cell must have adequate bottom slope or other means such as strategically placed deep-water zones to facilitate drainage for maintenance.

(2) A design must require that a bottom slope maintain an appropriate range of wetland water depths along the entire cell length under all anticipated operational flow conditions.

(f) Parallel trains. An FWS wetland must have parallel treatment trains to increase operational flexibility.

(g) Wind protection. An FWS wetland cell must be oriented to avoid prevailing winds perpendicular to the process flow direction or use elevated berms or vegetative windbreaks.

(h) Inlets and Outlets.

(1) The inlets and outlets of an FWS wetland cell must assure uniform distribution of influent flow and uniform collection of effluent flow across the entire cell cross section.

(2) Inlet and outlet devices must minimize erosion of wetland substrate from locally high velocity effluent flow.

(3) Each inlet and outlet device must be adjustable to allow variations in operational water level.

(4) Submergence. An inlet must be submerged under normal operational conditions.

(5) Inspection and Cleaning. A design must allow inspection and cleaning of inlet and outlet devices.

(i) Organic Loading and Treatment Efficiency.

(1) Constructed wetland process design may be based on organic loading design for typical municipal wastewater primary or secondary effluent, whichever is the influent for the constructed wetland.

(2) A design must be based on the organic removal treatment efficiency for FWS wetlands on the areal loading rate equation found in the following figure unless the report justifies an alternate method to determine the organic removal treatment efficiency by identifying a method, the sources of the method, and all supporting calculations.

Figure: 30 TAC §217.210(i)(2)

(j) Vector Control.

(1) The design of an FWS wetland must include mosquito control:

(A) using mosquito fish (Gambusia) and other natural predators,

(B) maintaining aerobic conditions, or

(C) using other biological controls.

(2) A design must minimize the potential damage to wetlands caused by mammals such as nutria and muskrats.

§217.211. Constructed Wetlands--Subsurface Flow System (SFS) General Design.

(a) A wetted subsurface media must allow adequate root penetration and be identified in the report.

(b) The operational water depth of a Subsurface Flow System (SFS) wetland must not exceed the lesser of:

(1) 18 inches at design flow; or

(2) the maximum normal root depth of the emergent plant species used in an SFS wetland.

(c) Seasonal draw down of the water level must be performed to encourage deeper root penetration into the wetted media.

(d) Plant spacing must be sufficient to allow maturity of a wetlands flora ecosystem, but must not exceed 36 inches on center.

(e) Configuration. An SFS wetland must include the following minimum configuration standards:

(1) Multiple cells. An SFS wetland must include multiple cells that can be operated independently, allowing individual cells to be removed from service while maintaining system operations.

(2) Cell Size. The size of a cell must meet permit effluent limitations with any single cell removed from service.

(3) Hydraulic profile.

(A) An SFS wetland must maintain minimum 6.0 inches of dry media cover at design flow, at least 2.0 inches of upstream media cover during peak flow conditions, and not more than 12.0 inches of upstream media cover during diurnal low flow conditions.

(B) An SFS wetland hydraulic profile must be based on the following figure, unless the report justifies an alternate design method, includes the source of the method, and all supporting calculations and documentation.
Figure 1: 30 TAC §217.211(e)(3)(B)
Figure 2: 30 TAC §217.211(e)(3)(B)

(4) Maximum depth.

(A) The maximum wetted media depth of an SFS wetland is the lesser of:

(i) 24 inches at design flow; or

(ii) the maximum normal root depth for a planned primary population emergent plant species.

(B) An SFS wetland must have a dry media cover depth of at least 6.0 inches and not more than 9.0 inches above the design flow hydraulic gradient.

(5) Minimum slope. An SFS wetland cell must have an adequate bottom slope to facilitate drainage for maintenance and to maintain media water depth over the entire cell length under all anticipated operational flow conditions.

(6) Parallel trains. An SFS wetland must have parallel treatment trains to increase operational flexibility.

(f) Flow Distribution. A constructed wetland must have effective flow distribution and collection to efficiently treat wastewater. An SFS wetland must include the following minimum flow distribution standards:

(1) Flow distribution.

(A) The inlet and outlet system of an SFS wetland cell must assure uniform distribution of influent flow and uniform collection of effluent flow across an entire cell.

(B) The inlet and outlet devices must not cause locally high velocities to avoid the movement of wetland media.

(C) Each inlet and outlet system must be adjustable to allow variation in operational water level and flooding of a cell for weed control.

(2) Submergence. Each inlet and outlet of an SFS wetland must be below the media surface.

(3) Maintenance. The design of an inlet and outlet device must allow inspection and cleaning.

(4) Staged influent feed. If a high influent BOD_5 load is anticipated, the design must allow for staged influent fee to improve process control.

(g) SFS Organic Loading and Treatment Efficiency.

(1) A constructed wetland process may be based on organic loading design for typical municipal wastewater primary or secondary effluent.

(2) A design must be based on the organic removal treatment efficiency for an SFS wetland on the areal loading equation found in the following figure unless the report justifies an alternate method to determine the organic removal treatment efficiency and all supporting calculations.
Figure: 30 TAC §217.211(g)(2)

(h) Temperature. A design must be adequate to treat wastewater in the range of temperatures of the wastewater in the facility.

(i) Vector Control. Vegetation maintenance, including removal of excessive plant litter and detritus, is required to prevent mosquito breeding opportunities.

(j) Media Design. SFS wetland media must meet the following minimum requirements:

(1) The media must be hard rock, slag, or other clean, comparable media material.

(2) The media must contain less than 0.1% by weight of clay, sand, and other fine materials.

(3) The media materials must have a Mohs hardness of at least 5.0.

(4) Media must be resistant to acidic conditions.

(5) Synthetic media is nonconforming or innovative technology and is subject to §217.7(b)(2) of this title (relating to Type of Plans and Specifications Approvals).

(6) Media gradation and uniformity must be used to determine the wetland's hydraulic conductivity.

(7) The media must be placed in an SFS wetland by light equipment to avoid introduction of clay or other undesirable materials, to avoid compaction, and to avoid creating ruts in the subgrade.

(8) If an SFS wetland has gravel media larger than 1.5 inch diameter, the design must specify a top layer of small gravel to encourage healthy plant rooting. The gravel layer must be above the normally saturated media zone. The design must specify a transitional (medium grade) layer between small gravel and coarse gravel to minimize small gravel migration into lower void spaces.

§217.212. Overland Flow Process.
An overland flow process is a nonconforming technology and subject to the requirements of §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

§217.213. Integrated Facultative Lagoons.

(a) Nonconforming technology. An integrated facultative lagoon is nonconforming technology and is subject to review in accordance with §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(b) Integrated Facultative Lagoon Design.

(1) The length-to-width ratio of an integrated facultative lagoon must be 3.0 to 1.0, unless the report justifies other dimensions more suitable to the site.

(2) A pit must not be less than 0.40 acre in total surface area.

(3) The outer lagoon area must not be less than 10 times the surface area of the pit.

(4) A pit must have adequate volume to contain:

(A) 0.1 cubic foot per capita per year sludge storage for a minimum of 20-years; and

(B) a two-day hydraulic retention time above the sludge storage area.

(5) The maximum up-flow velocity in the pit is 2.0 feet per day at design flow.

(6) If an integrated facultative lagoon has more than one pit, each pit must receive an amount of wastewater influent equivalent to the size of a pit.

(7) An inlet must be located in the pit portion of a lagoon.

(8) An outlet must be able to maintain the water level within 1.0 foot of a constant level.

(9) A design must locate an integrated facultative lagoon in a central location with regard to the surrounding secondary lagoons and meet the buffer zone requirements specified in §309.13 of this title (relating to Unsuitable Site Characteristics).

(10) Depth.

(A) The depth of an inlet pit must not be less than 15 feet deep from the water surface elevation during normal operating conditions to the influent inlet point within the pit.

(B) An integrated facultative lagoon must have berms or other deflection devices around the pit.

(C) The berm height must be at least the lesser of 5.0 feet or one-half the depth of the outer lagoon.

(D) The minimum distance from the water surface elevation during normal operating conditions to the top of the berm around a pit is 5.0 feet.

(11) Organic Loading. The maximum organic loading into a pit is 300 pounds of ultimate five-day biochemical oxygen demand (BOD_5) per acre of total lagoon area per day.

(12) Odor Control.

(A) An inlet to a pit must be 3.0 feet above the bottom of a lagoon and the flow must be directed downward.

(B) A design must allow water from a lagoon following an integrated facultative lagoon must be recirculated to the surface of the integrated facultative lagoon.

(C) An integrated facultative lagoon must be capable of recirculating at least 50% of the design flow from an outlet of the downstream lagoon.

(D) An integrated facultative lagoon must not siphon lagoon contents through a submerged inlet.

(13) Removal Efficiency.

(A) A design may be based on the removal efficiency of the pit of an integrated facultative lagoon no more than 60% of the influent BOD_5.

(B) A design may be based on subsequent removal efficiency of BOD_5 in the outer portion of the integrated facultative lagoon no more than 50% of the remaining BOD_5, which is 20% of the original BOD_5.

(14) Detention Time. An integrated facultative lagoon must provide a minimum of 21 days hydraulic retention time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER J. SLUDGE TREATMENT UNITS

30 TAC §§217.241 - 217.252

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; §26.121, which provides the commission's authority to prohibit unauthorized discharges; and Texas Health and Safety Code (THSC), §361.022, which provides the state's public policy concerning municipal solid waste and sludge.

The proposed new rules implement TWC §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, 26.121 and THSC, §361.022.

§217.241. General Requirements.

(a) For purposes of this section, the sludge process includes thickening, stabilization, and dewatering.

(b) A design must base the selection and operation of the sludge processing units on the desired final sludge product.

(c) A facility that disposes of sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) must stabilize the sludge.

(d) A facility that disposes of sludge under Chapter 330 of this title (relating to Municipal Solid Waste) must comply with the requirements of that chapter.

§217.242. Control of Sludge and Supernatant Volumes.

(a) Supernatant, filtrate, or centrate resulting from sludge processing must be returned to the headworks or at a point preceding an aeration system or secondary treatment unit.

(b) A sludge processing unit must limit digester supernatant liquor volume to the greatest extent practical.

(c) A sludge processing unit must minimize the impact of the returned supernatant on the treatment units.

§217.243. Sludge Pipes.

(a) Each pipe associated with a sludge processing unit must have sufficient gradient to ensure the flow of sludge.

(b) A pipe under a stationary structure must allow a blockage to be easily eliminated by rodding or a sewer-cleaning device.

(c) A gravity pipe must have uniform grade and alignment.

(d) The slope of a gravity discharge pipe must not be less than 3.0%.

(e) The minimum diameter for pipe associated with sludge processing is shown in the following figure:
Figure: 30 TAC §217.243(e)

(f) The available head on a discharge using gravity withdrawal pipe must be at least 4.0 feet.

(g) A gravity pipe used for withdrawal from the primary sludge clarifier pump must allow for removal of digested sludge.

(h) Each sludge pipe must include a means to observe the quality of the supernatant from each of the withdrawal outlets.

(i) Each individual sludge processing and treatment unit must have a dedicated means of dewatering.

(j) Pipe located inside a digestion tank must be designed for use in corrosive environments and must be sufficiently supported to prevent damage to the pipe or adjacent equipment.

§217.244. Sludge Pumps.

(a) A sludge transfer pump size must be based on the quantity and character of the anticipated solids load.

(b) A mechanical pumping system must provide the minimum required firm pumping capacity with the largest sludge pumping unit out of service.

(c) An air lift pump is acceptable for use as a sludge pump. Airlift pumps are not subject to redundancy requirement outlined in subsection (b) of this section.

(d) A centrifugal sludge pump must have a positive suction head, unless the pump includes a priming device.

(e) A positive displacement pump or other type of pump with demonstrated solids handling capability must be used for handling raw sludge.

(f) Centrifugal pumps must be designed with sufficient net positive suction head to operate at the minimum anticipated water level occurring on the suction side.

(g) A positive suction head of 24 inches or more is required for all sludge pumps.

§217.245. Exclusion of Grit and Grease from Sludge Treatment Units.

(a) A facility design must minimize the amount grit, debris, oil, and grease entering a sludge treatment unit.

(b) A sludge treatment unit must be designed for the final use or final disposal of the various solids generated during the treatment of domestic sewage.

(c) If sludge is to be land applied, a sludge treatment unit must remove screenings, grit, and grease, which must be disposed of separately from the sludge.

§217.246. Ventilation and Odor Control.

(a) A design must include sufficient ventilation to eliminate an accumulation of fumes or gases at a level that might be a health hazard or a threaten air quality.

(b) An enclosed area that may be accessed by staff must have automatic mechanical ventilation.

(1) A continuous ventilation system must provide at least six complete air exchanges per hour.

(2) An intermittent ventilation system must provide at least 30 complete air exchanges per hour.

(c) A sludge processing unit must be designed to prevent nuisance odors.

§217.247. Chemical Pretreatment of Sludge.

(a) A chemical used to treat sludge must be compatible with the operation of the treatment unit and must have no detrimental effect upon receiving waters.

(b) The report must justify appropriate chemicals and feed ranges by including a pilot plant study or data from a treatment unit with characteristics such as organic levels, metal concentrations, and hydraulics that are within 25% of the proposed design.

(c) Each chemical must be stored safely.

(d) A liquid chemical storage tank must include:

(1) a liquid level indicator; and

(2) an overflow receiving basin or drain capable retaining any spill.

(e) Powdered activated carbon must be stored in an isolated fireproof area.

(f) A storage or handling area where potentially volatile chemicals or conditions may occur must have electrical outlets, lights, and motors that meet National Electric Code, including explosion prevention requirements.

(g) Transport, transfer, storage, and use of any volatile chemical must prevent discharge to the atmosphere.

(h) A facility must have at least a 30-day supply of each chemical in dry storage conditions, unless the report justifies a reduced amount.

(i) A solution storage tank or direct-feed day tank must have sufficient capacity for operation at the design flow of the facility.

(j) The procedures for measuring the quantity of each chemical used to prepare each feed solution must be included in the facility's operation and maintenance manual.

(k) The design of a storage tank, pipe, or other equipment must be compatible with the chemical it is designed to handle.

(l) Intermixing of chemicals prior to preparing a feed solution is prohibited.

(m) Concentrated liquid acid must not be stored in an open vessel, but must be pumped in undiluted form from the original container to a point of treatment, a covered day tank, or a storage tank.

(n) Concentrated liquid acid must be kept in a closed, acid-resistant shipping container or storage unit.

(o) The transfer of a toxic material must be controlled by a positive actuating device.

(p) A facility must be designed with one or more of the following control methods to ensure that a transfer of a dry chemical will minimize dust:

(1) Vacuum pneumatic equipment of a closed conveyor system;

(2) A facility for emptying shipping containers in a special enclosure; or

(3) An exhaust fan and dust filter that put a hopper or bin under negative pressure sufficient to eliminate chemical particles in the air.

(q) Disposing of a chemical or an empty chemical container must be done in a manner that minimizes the potential for harmful exposure and in compliance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(r) Chemical feed equipment must meet the following requirements:

(1) Structures housing equipment.

(A) A floor surface must be smooth, slip resistant, impervious, and must have a minimum slope of 1/8 inch per foot.

(B) An open basin, tank, or conduit must be protected from a chemical spill or accidental drainage.

(C) An area that houses chemical feed equipment must provide access for servicing, repair, and observation of operations.

(2) Redundancy. A feed system must have at least two feeders and must be able to supply the amount of chemicals needed for process reliability throughout the range of feed. Feed equipment must be able to maintain operation at design flow with the largest operational unit out of service.

(3) Design and Capacity.

(A) A feed system must be able to deliver a proportional amount of chemical feed based on the rate of flow.

(B) A feed system must not use positive displacement type solution feed pumps to feed chemical slurries, unless the report justifies such use.

(C) If using potable water, the water must be protected by at least the equivalent of two backflow preventers, including at least one air gap between a supply pipe and a solution tank.

(D) A feed system component must be resistant to the chemical it is designed to apply.

(E) A dry chemical feed system must:

(i) measure the chemical volumetrically or gravimetrically;

(ii) provide effective mixing and solution of the chemical in a solution pot;

(iii) provide gravity feed from a solution pot;

(iv) completely enclose chemicals; and

(v) prevent emission of dust to the operation room.

(4) Spill Containment. The feed equipment must have protective curbing to contain a chemical spill.

(5) Control Systems.

(A) All feed systems must have an automatic control system that is capable of manual control.

(B) A feed system must have manual starting equipment.

(C) A feed system may be designed with an automatic chemical dose or residual analyzer.

(D) If an automatic chemical dosing or residual analyzer is used, the design must require both recording charts and an alarm for any critical value.

(6) Weighing Scales. A volumetric dry chemical feeder or a non-volumetrically calibrated carboy must have weighing scales that measure in increments of no greater than 0.5% of the load.

(7) Feed System Protection. A feed system must have freeze protection and must be accessible for cleaning.

(8) Water Supply.

(A) A water supply for chemical mixing may be potable water or reclaimed water.

(B) A feed system must protect its water supply from contamination.

(C) A water supply must have sufficient pressure to ensure dependable operations.

(D) A water supply must include a means for measuring solution concentrations.

(E) A water supply design must include sufficient duplicate equipment to ensure process reliability.

(F) A design may include a booster pump to maintain water pressure.

(9) Solution Tanks.

(A) A solution tank must be able to maintain uniform strength of solution consistent with the nature of the chemical solution and must provide continuous agitation.

(B) A feed system must have at least two solution tanks.

(C) The solution tank(s) must provide storage for at least one full day of operation at design flow.

(D) A solution tank must have a drain and a solution level indicator.

(E) An intake point for potable water must have an air gap.

(F) A chemical solution tank must be covered and have an access opening that is curbed and fitted with a tight cover.

(G) Each subsurface solution tank must:

(i) be impermeable;

(ii) be protected against buoyancy;

(iii) include a means to drain groundwater or other accumulated water away from the tank;

(iv) include leak detection; and

(v) allow for containment and remediation of any chemical spill.

(H) An overflow pipe must:

(i) be turned downward;

(ii) have an unobstructed discharge;

(iii) clearly visible;

(iv) drain to a containment area; and

(v) must not contaminate the wastewater or receiving stream.

(10) Chemical Application.

(A) A chemical application system be efficient and operate safely.

(B) The chemicals application system must prevent backflow or back-siphoning between multiple points of feed through common manifolds.

(C) The application of a pH-affecting chemical to the wastewater must be done before the addition of a coagulant.

§217.248. Sludge Thickening.

(a) If a sludge thickener(s) is used, following criteria are required:

(1) Capacity. A sludge thickener must be capable of operating at the peak flow rate.

(2) Flexibility.

(A) A sludge thickening system must have a bypass.

(B) A facility with a design flow greater than 1.0 million gallons per day (mgd) must have:

(i) at least dual sludge thickening units;

(ii) an alternate means of thickening; or

(iii) an alternate disposal method.

(b) Specific Requirements for a Mechanical Gravity Thickener.

(1) Equipment Features.

(A) A mechanical gravity thickener must have:

(i) a low-speed stirring mechanism for continuous mixing and flocculation within the zone of sludge concentration;

(ii) sludge storage, if sufficient storage is unavailable in other external tankage; and

(iii) a means of controlling the rate of sludge withdrawal.

(B) A mechanical thickener may use a chemical addition or dilution water feed system.

(C) A scraper mechanical train must be capable of withstanding any expected torque load. The normal working torque load must not exceed 10% of the manufacturer's recommended torque load.

(2) Design Basis.

(A) A mechanical thickener design must be justified in the report.

(B) The executive director may require data from a pilot study or similar sludge thickening unit operating under similar conditions.

(C) The thickener overflow rate must be at least 400 gallons per day per square foot (gpd/sf) but no more than 800 gpd/sf.

(D) The minimum side water depth for a mechanical thickener is 10 feet.

(E) A circular thickener must have a minimum bottom slope of 1.5 inches per foot.

(F) The peripheral velocity of a scraper must be at least 15 feet per minute but no more than 20 feet per minute.

(G) A mechanical thickener design must minimize the potential for short-circuiting.

(c) Dissolved Air Flotation (DAF) Thickener.

(1) Equipment Features.

(A) A DAF basin must have a bottom scraper that function independently of the surface skimmer.

(B) A recycle pressurization system for a DAF basin must use effluent or secondary effluent instead of potable water.

(C) A DAF basin must have a polymer feed system. A feed system must meet the requirements of §217.247(r) of this title (relating to Chemical Pretreatment of Sludge).

(D) A DAF basin must be located in a covered building with positive air ventilation.

(2) Design Basis.

(A) A DAF basin design must be justified in the report.

(B) The executive director may require data from a pilot study or similar DAF operating under similar conditions.

(C) The hydraulic loading rate must not exceed 2.0 gallons per minute (gpm) per square foot (sf).

(D) The solids loading rate must be at least 1.0 pound but not more than 4.0 pounds per hour per sf.

(E) The air to solids weight ratio must be at least 0.02 but not more than 0.04.

(F) A retention tank system must have a minimum pressure of 40 pounds per square inch gauge.

(G) A skimmer must have multiple or variable speeds that allow an operational range of at least 1.0 foot per minute (fpm) but not more than 25.0 fpm.

(d) Centrifugal Thickener.

(1) A centrifugal thickener design must be justified in the report.

(2) The executive director may require data from a pilot study or similar centrifugal thickener operating under similar conditions.

(3) A centrifugal thickener must be preceded by pretreatment to prevent plugging of a nozzle or excessive wear in the bowl.

(4) The centrate is subject to §217.242 of this title (relating to Control of Sludge and Supernatant Volumes).

(e) Specific Requirements for Gravity Belt Thickeners.

(1) Equipment Features.

(A) Gravity belt thickeners must include a wash water system (60 pounds per square inch minimum) capable of providing 60 gpm per meter of belt width belt. Booster pumps may be employed to achieve design conditions.

(B) Gravity belt thickeners must include a polymer feed system that meets the requirements of §217.247 of this title.

(C) A filtrate drainage system must be sized to remove the full hydraulic capacity of a gravity belt thickener without accumulation or ponding.

(2) Design Basis. Gravity belt thickener sizing must be based upon the following criteria, unless otherwise justified in the report:

(A) maximum solids loading of 1,250 pounds per meter of belt width; or

(B) maximum hydraulic loading 250 gpm per meter of belt width.

(3) Gravity belt thickener filtrate is subject to the requirement in §217.242 of this title.

§217.249. Sludge Stabilization.

(a) Design Requirements. The design requirements for the stabilization processes in this section are based on the assumption that the process is the sole stabilization process employed at the facility.

(b) Variance. An owner must request a variance in accordance with §217.4 of this title (relating to Variances), if a design employs a series of two or more stabilization processes or methods.

(c) Anaerobic Digestion.

(1) A facility with a design flow exceeding 0.4 million gallons per day must have a at least two anaerobic digesters.

(2) Each digester may be used as a first stage or primary reactor for treating primary and secondary sludge flows.

(3) Each digester must have a means for transferring a portion of its contents to another digester.

(4) A facility that has been granted a variance to operate without multiple digesters must have an emergency storage basin so the digester may be taken out of service.

(d) Depth. An anaerobic digester must provide a minimum of 6.0 feet of storage depth for supernatant liquor.

(e) Maintenance Provisions. A design must allow access to each unit for maintenance.

(f) Digester Configuration.

(1) The bottom of a digester must slope towards a drainpipe.

(2) A flat-bottomed digestion chamber is prohibited.

(g) Access Manholes.

(1) The top of a digester must have at least two access manholes and a gas dome.

(2) One manhole must have a sufficient diameter to permit the use of mechanical equipment to remove grit and sand.

(3) A digester system must have a separate sidewall manhole at ground level.

(h) Safety.

(1) The facility operation and maintenance manual must require the use of non-sparking tools, rubber soled shoes, a safety harness, and gas detectors for flammable and toxic gases when working in a digester.

(2) At least one self-contained breathing apparatus must be maintained in operational condition and kept on site.

(i) Sludge Inlets and Outlets. To facilitate effective mixing of the digester contents a digester must have:

(1) multiple sludge inlets located to minimize short-circuiting and at least one inlet located in the center of a digester above the liquid level at design flow;

(2) at least three recirculation sections; and

(3) at least three outlets.

(j) Digester Capacity.

(1) The digester capacity must be calculated using the expected volume and character of the sludge. The report must include the calculations used to justify the design.

(2) The total digester volume must based upon:

(A) the volume of sludge added;

(B) the percent solids and character of the sludge;

(C) the temperature to be maintained in the digester;

(D) the degree or extent of mixing to be obtained; and

(E) the size of the installation with appropriate allowance for sludge and supernatant storage.

(3) A digester must able maintain a minimum daily average sludge digestion temperature of 35 degrees Celsius (95 degrees Fahrenheit) and maintain the temperature within a 4 degrees Celsius (+/-) range.

(4) The minimum detention time for sludge undergoing digestion for stabilization is 15 days in the primary digester for sludge to be landfilled, or the period required to achieve the necessary level of pathogen control and vector attraction reduction as required by Chapter 312, Subchapter D of this title (relating to Pathogen and Vector Attraction Reduction), if sludge is to be land applied.

(5) An unheated digester must provide a minimum detention time of 60 days and maintain a temperature of at least 20 degrees Celcius (68 degrees Fahrenheit), or the period required to achieve the necessary level of pathogen control and vector attraction reduction as required by Chapter 312, Subchapter D of this title.

(6) A Completely Mixed System.

(A) A digester must have an average feed loading rate of less than 200 pounds (lbs) of volatile solids per 1,000 cubic feet (cf) of volume per day in the active digestion volume.

(B) Complete mixing in 30 minutes or less is required for:

(i) a confined mixing system if gas or sludge flow is directed through a vertical channel;

(ii) a mechanical stirring or pumping system; and

(iii) an unconfined continuously discharging gas mixing system.

(C) A tank over 60 feet in diameter must have multiple mixing devices.

(D) The minimum gas flow supplied for complete mixing must be 15 cubic feet per minute (cfm) per 1,000 cf of digestion volume.

(E) A complete mixing system must have a flow-measuring device and a throttling valve.

(F) The minimum power supply for a mechanical stirring or pumping complete mixing system is 0.5 horsepower per 1,000 cf of digestion volume.

(7) Moderately Mixed Systems.

(A) A digestion system where mixing is accomplished only by circulating sludge through an external heat exchanger must be loaded at less than 40 lbs of volatile solids per 1,000 cf of volume per day in the active digestion volume. A design must be based on the volatile solids loading in accordance with the degree of mixing.

(B) The report must include a justification for the loading rates, if mixing is accomplished by another method.

(k) Gas Collection, Pipes, Storage, and Appurtenances.

(1) General Requirements. Each portion of a gas system must maintain positive gas pressure under all normal operating conditions, including sludge withdrawal.

(2) Safety Equipment.

(A) A gas system must include a pressure valve, vacuum relief valve, a flame trap, and an automatic safety shut-off valve.

(B) An installation of water seal equipment on a gas pipe is prohibited.

(3) Gas Pipes and Condensate.

(A) The gas pipe system must be designed for the volume of gas expected.

(B) A gas pipe must be pressure tested for leakage at 1.5 times the design pressure before a digester is placed into service.

(C) A gas pipe must slope at least 1/8 inch per foot to drain condensate.

(D) The main gas pipe from a digester must have a sediment trap and a drip trap.

(E) A float controlled condensate trap is prohibited.

(F) A condensation trap must be accessible for daily servicing and draining.

(G) A drip trap must be located at each low point in the pipes.

(H) A gas pipe to each gas outlet must have a flame check or a flame trap.

(I) A burner pilot must use natural or bottled gas.

(J) Each main gas pipe must have a flame trap with a fusible shut-off.

(K) A gas pipe to a waste gas burner must have a pressure valve and a vacuum relief valve.

(4) Electrical Fixtures and Equipment. The electrical equipment near sludge digester pipe containing gas must be designed to prevent potentially explosive conditions.

(l) Waste gas.

(1) A waste gas burner must be accessible and must be located at least 50 feet away from any structure, if placed at ground level.

(2) A waste gas burner may be located on the roof of the control building.

(3) A waste gas burner must not be located on top of a digester.

(4) A discharge of less than 100 cubic feet per hour of digester gas through a return bend screened vent with a flame trap terminating at least 10 feet above a walking surface is allowed.

(m) Ventilation.

(1) An underground enclosure connected to an anaerobic digesters tank, gas pipe, or sludge equipment must have forced ventilation in accordance §217.246 of this title (relating to Ventilation and Odor Control).

(2) An underground enclosure must have a tight-fitting, self-closing door to minimize the spread of gas.

(n) Gas Meter.

(1) A system must have a gas meter to measure total gas production.

(2) A meter must have a bypass.

(o) Manometer.

(1) A gas manometer must have a tight shut-off vent and vent cock.

(2) A vent pipe must be extended from a manometer to the outside of the building.

(3) A vent pipe opening must have a screen and be designed to prevent the entrance of rainwater.

(4) A design must specify all safety devices that are needed for a manometer pipe system and must list the safety items in the report.

(p) Gas Piping. The gas piping for an anaerobic digester must be equipped with gauges that measure the following in inches:

(1) the pressure of the main pipe;

(2) the pressure to gas-utilization equipment; and

(3) pressure to waste burners.

(q) Digestion Temperature Control.

(1) Passive Temperature Control.

(A) A digester must be constructed above the shallowest ground water table.

(B) A digester must be insulated to minimize heat loss.

(2) Heating Facilities.

(A) The sludge must be heated by circulating the sludge through an external heater.

(B) A piping system must allow for the preheating of feed sludge before introduction to the digesters, unless effective mixing is provided within a digester.

(C) A pipe and valve layout must facilitate cleaning.

(D) The size of a heat exchanger sludge pipe must be based on the heat transfer requirements.

(3) Heating Capacity.

(A) A digester system must have the heating capacity to maintain the temperature required for sludge stabilization.

(B) A digester system must be designed to use an alternate source of fuel and have an alternate source of fuel available for emergency use.

(4) Mixing. A digester system must have equipment to mix the sludge.

(5) Location of a Sludge Heating Device. A sludge heating device with an open flame must be located above grade and in an area separate from gas production and any storage area.

(r) Supernatant Withdrawal.

(1) Pipe Size. The minimum diameter for a supernatant pipe is 6.0 inches.

(2) Withdrawal Arrangements.

(A) The supernatant pipes must be arranged to allow withdrawal from three or more levels in a tank.

(B) A supernatant selector must have at least two draw-off levels located in the digester's supernatant zone, in addition to an unvalved emergency supernatant draw-off pipe.

(C) A system must have a positive, unvalved, vented overflow.

(D) A supernatant withdrawal level design must be based on a fixed cover digester design.

(E) Supernatant withdrawal must be by means of interchangeable extensions at the discharge end of a withdrawal pipe.

(F) A supernatant piping system must have high-pressure backwash equipment.

(3) Sampling.

(A) A supernatant pipe must have sampling points at each supernatant draw-off level.

(B) The minimum diameter for a sampling pipe is 1.5 inches.

(4) Supernatant Handling.

(A) The report must include how the treatment units are designed to handle shock organic loads associated with digester supernatant.

(B) Supernatant liquor from an anaerobic digester may be returned directly to the facility for treatment or chemically treated before being returned to the facility for treatment. Any other method of treating supernatant liquor must be approved by the executive director.

(C) If treating the supernatant liquor with lime, each of the following requirements must be met:

(i) Lime must be applied to obtain a pH of at least 11.5 standard units (su).

(ii) A lime feeder must be capable of feeding 2,000 mg/l of hydrated lime or its equivalent.

(iii) Lime must be mixed with the supernatant liquor by a rapid mixer or by agitation with air in a mixing chamber.

(iv) After adequate mixing, the solids must be allowed to settle.

(D) A supernatant liquor treatment system may be a batch or a continuous process.

(i) A batch process may have the mixing and settling processes in the same tank.

(ii) A sedimentation tank for a batch process must have the capacity to hold at least 36 hours of supernatant liquor at design flow, but not less than 1.5 gallons per capita.

(iii) A sedimentation tank for a continuous process must have a detention time of not less than 8.0 hours.

(E) The solids from the supernatant liquor treatment must be returned to a digester or conveyed to a sludge handling unit.

(F) The clarified supernatant liquor must be returned to the head of the treatment works in accordance with §217.242 of this title (relating to Control of Sludge and Supernatant Volumes).

(s) Anaerobic Digester Covers.

(1) An uncovered anaerobic digester is prohibited.

(2) The sludge and supernatant withdrawal pipes for a single-stage or a first-stage digester with a fixed cover must be arranged to minimize the possibility of air being drawn into a gas chamber above the liquid in a digester.

(3) A digester cover must include a gas chamber.

(4) A digester cover must be gas tight. The specifications must include a test of each digester cover for gas leakage.

(5) A digester cover must be equipped with an air vent with a flame trap, a vacuum breaker, and a pressure relief valve.

(t) Aerobic Sludge Digestion. This subsection applies to the stabilization by aerobic digestion of waste sludge to Class B biosolids as defined in Chapter 312 of this title.

(1) Solids Management. The report must include a solids management plan.

(2) Detention Time. The design temperature of an aerobic digester system must be based the average of the lowest consecutive seven-day low temperature at a similar wastewater treatment facility located within 50 miles of a proposed site must be used.

(3) Mass Balance Requirements. Mass balance calculations must be included in report. The mass balance calculations must take into account design sludge age, wastestream concentration, operational hours, operational volume in tanks, decant or dewatering volumes and characteristics, time needed for decanting or dewatering, and the volume needed for storage and sampling.

(4) Single Stage. Single stage aerobic digestion consists of utilizing one tank operating in continuous-mode-no-supernatant removal, continuous-mode-feeding-batch removal, or other mode detailed in a solids management plan.

(A) The design of the size of an aerobic digester must be based on the minimum total detention time for the water temperature in the table located in subparagraph (B) of this paragraph based on Chapter 312 of this title and 40 Code of Federal Regulations Part 503.

(B) The digester size must be sufficient to provide both the detention time in the following table and to provide for the mass load received by the unit:
Figure: 30 TAC §217.249(t)(4)(B)

(5) Multiple Stage. Multiple stage aerobic digestion consists of two or more completely mixed reactors operating in series.

(6) Field Data.

(A) Any increase in flow or organic loading or change in process requires new testing and verification of time and temperature operating parameters.

(B) An expansion of an existing facility may be designed and operated according to previously established time and temperature operating parameters.

(C) The executive director may re-rate a facility under Subchapter B of this chapter (relating to Treatment Facility Design Re-

quirements), if an owner requests a re-rating and submits sufficient supporting data.

(7) Design Requirements.

(A) The maximum solids concentration used to calculate the total detention time for an aerobic digester that concentrates the waste sludge only in a digester tank must be:

(i) 2.0% solids concentration; unless

(ii) supporting data is submitted in the report to increase the solids concentration to 3.0%; or

(iii) a higher concentration is justified by the use of a sludge thickening unit upstream of a digester.

(B) A diffuser must be designed to minimize clogging.

(C) A diffuser must be designed to permit its removal without dewatering a tank for inspection, maintenance, and replacement.

(D) The volatile solids loading rate must be designed to be at least 100 lb but not more than 200 lb of volatile solids per 1,000 cf per day, unless otherwise justified in the report.

(E) The dissolved oxygen concentration maintained in the liquid must be at least 0.5 mg/l.

(F) The energy input for mixing must be at least 0.5 horsepower per 1,000 cf for mechanical aerators.

(G) The energy input for mixing must be at least 20 standard cf per minute per 1,000 cf per 1,000 cf of aeration tank if diffused air mixing is used.

(H) A unit must be designed for effective separation and withdrawal, or decanting of the supernatant.

(u) Heat Stabilization.

(1) The design of a heat treatment system must be based on the anticipated sludge flow, characteristics, and concentration.

(2) A heat treatment system must operate continuously to minimize the additional heat input necessary to start up the system, unless justified in the report.

(3) A heat treatment system must have multiple units, unless storage or an alternate stabilization method is available.

(4) A single unit heat treatment system must have a standby grinder, fuel pump, air compressor, if applicable, and dual sludge pumps.

(5) The report must identify the expected downtime for maintenance and repair, based on data from a comparable facility.

(6) The report must include a design for adequate storage for process feed and downtime.

(7) A heat treatment system must provide heat stabilization in a reaction vessel:

(A) at a minimum of 175 degrees Celcius (350 degrees Fahrenheit) for 40 minutes but not more than 205 degrees Celcius (400 degrees Fahrenheit) for 20 minutes and at a pressure of not less than 250 lbs per square inch gauge (psig) but not more than 400 lbs/psig; or

(B) provide for pasteurization at temperatures of 30 degrees Celcius (85 degrees Fahrenheit) or more and gage pressure of more than 1.0 standard atmosphere (14.7 pounds per square inch) for a period of at least 25 days.

(8) A heat treatment system must have a sludge grinder to protect a heat exchanger from rag fouling.

(9) A heat treatment system must include an acid wash or high-pressure water wash system to remove scale from heat exchangers and reactors.

(10) A decant tank must have a sludge scraper mechanism and must be covered.

(11) A heat exchanger must be constructed of corrosion resistant material.

(12) A heat treatment system must have a continuous temperature recorder.

(v) Recycle Loads.

(1) The report must identify a method of treatment for the recycle stream from heat treatment.

(2) A recycle stream must not impact effluent quality or the facility's treatment processes.

(w) Alkaline Stabilization.

(1) Design Basis.

(A) Alkaline Dosage. The report must include the calculation of the alkaline dosage required to stabilize sludge based on the type of sludge, chemical composition of sludge, and the solids concentration. Performance data taken from a pilot test program or from a comparable facility must be used to determine the proper dosage.

(B) Temperature, pH, and Contact Time. An alkaline stabilization system must uniformly mix an alkaline additive-sludge mixture to maintain the pH, temperature, and contact time, as specified in §312.82 of this title (relating to Pathogen Reduction) and §312.83 of this title (relating to Vector Attraction Reduction).

(2) Reliability.

(A) An alkaline stabilization system must have multiple units, unless storage or an alternate stabilization method is available to continue operations when a unit is not in service.

(B) A single unit that has adequate storage or an alternate stabilization method must have standby conveyance and mixer, backup heat source, and dual blowers.

(C) A design must include:

(i) the expected downtime for maintenance and repair based on data from a comparable facility; and

(ii) adequate storage for process, feed, and downtime.

(3) Alkaline Stabilization Housing Unit.

(A) A housing unit must meet the requirements in §217.247(u)(1) of this title (relating to Chemical Pretreatment of Sludge).

(B) A housing unit must have mechanical or air agitation to ensure uniform discharge from the storage bins.

(4) Feeding Equipment.

(A) The alkaline additive feeding equipment must meet the requirements of §217.247(u)(1) of this title.

(B) Hydrated lime must be fed as at least 6% calcium hydroxide $Ca(OH)_2$ slurry by weight but not more than 18% $Ca(OH)_2$ slurry by weight, unless otherwise justified in the report.

(C) The report must identify a means for controlling the feed rate of any other dry additive.

(5) Mixing Equipment.

(A) An additive and sludge blending or mixing vessel must be large enough to hold the mixture for a minimum of 30 minutes at maximum feed rate.

(B) A batch process must maintain a pH greater than 12 su in a mixing tank during the blending period.

(C) A continuous flow process must maintain a pH greater than 12 su in an exit pipe.

(D) A continuous flow process must be designed for a detention time that is the tank volume divided by the volumetric input flow rate.

(E) A slurry mixture may be mixed with either a diffused air mixer or a mechanical mixer.

(F) The mixing equipment must maintain an alkaline slurry mixture in complete suspension.

(G) If using a diffused air mixer, the following requirements apply.

(i) A coarse bubble diffuser must have a minimum air supply of 20 standard cubic feet per minute per 1,000 cf of tank volume.

(ii) A mixing tank must be ventilated and include odor control equipment.

(H) If using a mechanical mixer, the following requirements apply.

(i) A mechanical mixer must provide at least 5.0 horse power per 1,000 cf of tank volume but not more than 10 horse power per 1,000 cf of tank volume.

(ii) The impellers must minimize debris fouling in the sludge.

(6) Detention Time. A pasteurization vessel must provide a minimum detention period of 30 minutes.

(7) External Heat. The report must include any supplemental external heat necessary.

§217.250. Sludge Dewatering.

(a) The report must include a justification for the proposed sludge dewatering units, including design calculations, results from any pilot studies, all assumptions, and appropriate references.

(b) The design of a dewatering unit must be based on mass balance principles.

(c) General Requirements.

(1) Centrate or Filtrate Recycle.

(A) The drainage from beds and centrate or filtrate from dewatering units must be returned to the head of the facility for treatment.

(B) The design of a treatment unit downstream from a dewatering unit must be based on the organic load from the centrate or filtrate recycle.

(2) Sludge with Industrial Waste Contributions. A dewatering system must be designed to prevent the release of any constituent (such as a free metal, an organic toxin, or a strong reducing or oxidizing compound) that threatens water quality or compliance with the associated wastewater permit.

(3) Redundancy.

(A) A mechanical dewatering system must have at least two units, unless the report justifies adequate storage or an alternative means of sludge handling.

(B) When performance reliability and sludge management are dependent on production of dewatered sludge, the mechanical dewatering units must be able to dewater the average daily sludge flow with the largest unit out of service.

(4) Storage Requirements.

(A) A mechanical dewatering system must have separate storage if the equipment will not operate on a continuous basis and the treatment system has no digesters with built-in short-term storage.

(B) In-line storage of stabilized or unstabilized sludge must not interfere with any treatment unit.

(C) The separate sludge storage from a primary digester must be aerated and mixed to prevent a nuisance odor condition.

(5) Sampling Points. A dewatering system must have sampling stations before and after each dewatering unit and must allow periodic evaluation of the dewatering process.

(6) Maintenance. Each dewatering system unit must have a bypass to allow for maintenance, repair, and replacement.

(d) Sludge Conditioning.

(1) An additive addition point must be located in relation to downstream equipment and in relation to the combined effect of other additives.

(2) A dewatering system must provide adequate mixing time for the reaction between an additive and the sludge. Any subsequent handling must eliminate floc shearing.

(3) The report must include a pilot plant or full-size performance data used to determine the characteristics and design dosage of any sludge additive.

(4) The report must justify the in-stream flocculation and coagulation system design by including comparable performance data or pilot plant data.

(5) The report must include whether the mixers require conditioning tanks.

(6) The report must include calculations for a range of detention times.

(7) Solution storage may be smaller than the design volume required for daily dosage if the equipment is not in continuous operation.

(8) A minimum of eight hours storage must be provided, unless the specific chemical or additive selected is adversely affected by storage.

(9) The storage for a batch operation must be adequate for one batch at maximum chemical demand.

(10) The report must justify any storage volume reduction and any other method used to ensure a continuous supply of chemicals through an operating day or batch.

(e) Sludge Drying Beds.

(1) The sludge drying beds size must be based on data from a similar facility in the same geographical area with the same influent sludge characteristics.

(2) If such data is unavailable, or if the executive director determines that the data is not appropriate for a proposed facility, the design of sludge drying beds must be based on the following:

(A) Open Beds.

(i) A sludge drying bed system must have at least two beds.

(ii) The report must include the calculation of the minimum surface area for a sludge drying bed using the values in the following figure for an area of the state with less than 45 inches annual average rainfall or annual average relative humidity of less than 50%, as determined by National Weather Service data.
Figure: 30 TAC §217.250(e)(2)(A)(ii)

(iii) Another method of sludge dewatering is required in lieu of a sludge drying bed in an area of the state that experiences either greater than 45 inches average annual rainfall or annual average relative humidity of 50% or greater, as determined by National Weather Service data.

(iv) A design must:

(I) provide a method of effectively dewatering sludge;

(II) provide a means for accelerated dewatering;

(III) size the sludge drying beds to store accumulated sludge during periods of extended high humidity and rainfall; and

(IV) provide an alternative dewatering method to effectively dewater the sludge during periods of extended high humidity and rainfall.

(v) The report must provide justification for use of modified sludge drying beds in high rainfall, high relative humidity areas of the state.

(B) Gravel Media Beds. A gravel media bed must be laid in two or more layers. The gravel around the underdrains must be properly graded and must be at least 12 inches deep, extending at least 6.0 inches above the top of the underdrains. The top layer of a gravel media bed must be at least three inches thick and must consist of gravel 1/8 inch to 1/4 inch in size.

(C) Sand Media Beds. A sand media bed must consist of at least 12 inches of sand with a uniformity coefficient of less than 4.0 and an effective grain size of at least 0.3 millimeters (mm) but not more than 75 mm above the top of an underdrain.

(D) Underdrains.

(i) The underdrains must be at least 4.0 inches in diameter and sloped not less than 1.0% to drain.

(ii) The underdrains must be spaced not more than 20 feet apart.

(E) Decanting. A sludge drying bed may have a method of decanting supernatant installed on the perimeter of the bed.

(F) Walls.

(i) The interior walls of a sludge drying bed must be watertight and extend 12 to 24 inches above and at least 6 inches below the bed surface.

(ii) The exterior walls of a sludge drying bed must be watertight and extend 12 to 24 inches above the bed surface or ground elevation, whichever is higher.

(G) Sludge Removal.

(i) A sludge drying bed system must be arranged to facilitate sludge removal.

(ii) The sludge drying beds must have concrete pads for vehicle support tracks on 20 foot centers for all percolation type sludge beds.

(H) Sludge Influent.

(i) A sludge pipe to the beds must terminate at least 12 inches above the surface of the media and be arranged so that the pipe drains to a sump to be pumped to the headworks.

(ii) A sludge discharge point must have a concrete splash plate.

(I) Drying Bed Bottom.

(i) The bottom of a sludge drying bed must consist of a minimum of one foot layer of clayey subsoil having a permeability of less than 10^{-7} centimeters per second (cm/sec).

(ii) An impermeable concrete pad must be installed over a liner in locations where the groundwater table is within 4.0 feet of the bottom.

(3) Modified Drying Beds. The executive director will review any vacuum assisted or other variations to the gravity drying bed concept as innovative and/or nonconforming technologies subject to §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

(4) Rotary Vacuum Filtration.

(A) Filtration Rate. The report must justify the actual value calculated for the rates of filtering for various types of sludge with proper conditioning, using the following table:
Figure: 30 TAC §217.250(e)(4)(A)

(B) Duplicate Equipment. Unless dual trains are provided, the following equipment must be provided in duplicate to allow equipment alternation: feed pump, vacuum pump and filtrate pump. Spare filter fabric must be provided except when metal coils are used.

(C) Filter Equipment. Wetted parts must be constructed of corrosion-resistant material. Drum and agitator assemblies must be equipped with variable-speed drives and provisions must be made for adjusting the liquid level.

(D) Pumps.

(i) A vacuum pump with a capacity of at least 1.5 cubic feet per minute per square foot (cfm/sf) must be provided for metal-covered drums.

(ii) A dry-type vacuum pump must have a vacuum receiver.

(iii) A filtrate pump must have adequate capacity to pump the maximum amount of liquid to be removed from the sludge.

(iv) Each filter must be fed by a separate feed pump to ensure a proper feed rate.

(5) Centrifugal Dewatering.

(A) The report must justify the sizing and design of a centrifugation system. A design must be based on performance data

from a similar centrifugation system when available. If no performance data is available, the results of a pilot or full-scale test must be used.

(B) Selection of a material for a scroll must be include consideration of the amount of grit expected in the sludge.

(C) A design must include adequate sludge storage.

(D) Unless dual trains are provided, a centrifugation system must have the following spare equipment, including necessary connecting pipes and electrical controls:

(i) drive motor;

(ii) gear assembly; and

(iii) feed pump.

(E) Each feed pump must have variable speed.

(F) Each centrifuge must have a separate feed system.

(G) Each centrifuge must be equipped for variable scroll speed and pool depth.

(H) Each centrifugation system must have a crane or monorail for equipment removal or maintenance.

(I) Each centrifuge system must have access for adequate and efficient wash down of the interior of the machine.

(6) Plate and Frame Presses.

(A) Sizing.

(i) A design must be based on performance data developed from similar operational characteristics concerning the size of a plate and frame press when available. If no performance data is available, the results of a pilot scale tests or full-scale tests must be used.

(ii) A design may be based on appropriate scale-up factors for full size designs if pilot scale testing is done in lieu of full-scale testing.

(iii) The report must justify the size of a plate and frame press.

(B) Duplicate Equipment and Spare Parts. Unless multiple units are provided, a plate and frame press system must include the following spare equipment:

(i) a duplicate feed pump;

(ii) at least one extra plate for every ten required for startup, but not less than two;

(iii) one complete filter fabric set;

(iv) one closure drive system;

(v) air compressor; and

(vi) one washwater booster pump.

(C) Operational Requirements.

(i) The filter feed pumps must be capable of a combination of initial high flow, low pressure filling, followed by sustained periods of operating at 100 pounds per square inch (psi) to 225 psi.

(ii) A design may specify an integral pressure vessel to produce this initial high volume flow.

(iii) A plate and frame system may use operating pressures less than 225 psi if the report includes actual performance data using similar sludge justifying such a use.

(iv) A design may include provisions for cake breaking to protect or enhance down line processes when necessary.

(D) Maintenance.

(i) A plate and frame system must have a crane or monorail capable of removing the plates.

(ii) A plate and frame system must have a high-pressure water or acid wash system to clean the filter.

(7) Belt Presses.

(A) Sizing.

(i) Actual performance data developed from a facility with similar operational characteristics must be used to size a belt press system. If pilot plant testing is performed in lieu of full-scale testing, appropriate scale-up factors must be used to develop a full-scale design.

(ii) A belt press system must have a duplicate belt press or another method of sludge processing or disposal that has been approved by the executive director if:

(I) a single belt press will be operated 60 hours or more in any consecutive 5 day period; or

(II) the design flow exceeds 4.0 million gallons per day (mgd).

(iii) The report must include all data used to size a belt press system.

(B) Duplicate Equipment and Spare Parts. Unless multiple units are provided, a belt press system must have the following spare equipment:

(i) a duplicate feed pump;

(ii) washwater booster pumps;

(iii) one complete set of belts;

(iv) one set of bearings for each type of press bearing;

(v) duplicate tensioning;

(vi) tracking sensors;

(vii) one set of wash nozzles;

(viii) one doctor blade; and

(ix) duplicate conditioning or flocculation drive equipment.

(C) Conditioning. The report must include the polymer selection methodology, account for sludge variability, and document the anticipated sludge loading to the press.

(D) Sludge Feed.

(i) The sludge feed must be relatively constant to eliminate difficulties in polymer addition and press operation.

(ii) The report must include the range in feed variability.

(iii) A belt press system may include grinders ahead of a flocculation system.

(iv) The sludge feed must provide a method for uniform sludge dispersion on a belt.

(v) A belt press system must use thickening of the feed sludge unless the report justifies separate thickening or dual purpose thickening.

(E) Filter Press Belts.

(i) A belt must have variable speed.

(ii) A belt press system must have belt tracking and tensioning equipment.

(iii) The report must justify the weave, material, width, and thickness of the belts.

(F) Filter Press Rollers.

(i) The rollers must have a protective finish.

(ii) The maximum roller deflection and operating tension of a belt must be included in the report to justify equipment selection.

(iii) The roller bearings must be watertight and rated for a life of 100,000 hours.

(G) Spray Wash System.

(i) A belt press system must use high-pressure wash water for each belt.

(ii) A design must specify the operating pressure at the point of washwater discharge.

(iii) A spray wash system must allow cleaning without interfering with the system operation.

(iv) The report must justify the nozzle and nozzle cleaning system selection.

(v) A belt press system must have replaceable spray nozzles and spray curtains.

(H) Maintenance Requirements.

(i) A belt press system must have drip trays under the press and under the thickener when gravity belt thickening is employed.

(ii) The side and floor of a belt press must have adequate clearance for maintenance and removal of the dewatered sludge.

(iii) An electrical panel or other material subject to corrosion must be weatherproof or located outside of the press area.

(iv) A doctor blade clearance must be adjustable.

§217.251. Sludge Storage.

(a) This section applies to the storage of residuals after processing but before final disposal or removal from the facility site.

(b) A site may store residuals in liquid, dewatered, or dry form if the solids have been stabilized in a treatment process.

(c) General Storage Requirements.

(1) The design of a storage facility must minimize odor conditions and vector attraction.

(2) A storage facility must provide storage of waste sludge separate from a biological treatment process.

(3) The design of a storage facility must be based on process design, sludge age, waste stream concentration, operational hours, operational volume in tanks, decant or dewatering volumes and characteristics, time frames needed for decanting or dewatering, and volume needed for storage and sampling.

(4) The report must include a solids management plan that demonstrates a method of managing the waste solids that will maintain the design sludge age for a biological process.

(d) Storage of Solids - Not Dewatered.

(1) Aerobically Digested Solids.

(A) A storage facility may store aerobically digested solids.

(B) A basin must have diffused air or mechanical mixing.

(C) A diffused air-mixing unit must provide a minimum air capacity of 30 standard cubic feet per minute per 1,000 cubic feet (cf) of volume.

(D) A mechanical surface aerator must have a minimum of 1.0 horsepower per 1,000 cf of volume.

(E) An earthen basin must be lined in accordance with §217.203(c) and (d) of this title (relating to Design Criteria for Natural Treatment Facilities).

(2) Anaerobically Digested Solids. Anaerobically digested solids may be stored in a covered basin.

(e) Storage of Dewatered Solids.

(1) A storage facility must store the dewatered solids in a container or in a stockpile that prevents re-wetting by precipitation.

(2) A storage container may store dewatered solids with a solids content of less than 35% for no more than seven days.

(3) A storage facility must store dewatered solids in a steel or concrete container that prevents re-wetting by precipitation.

(4) A storage facility may store dewatered solids with a solids content of at least 35% but not more than 50% for no more than 90 days.

(f) Open Stockpiles.

(1) An open stockpile must have an impervious pad underneath the solids to prevent groundwater contamination.

(2) An open stockpile must have a system for collecting storm water runoff and returning it to the head of the treatment facility.

(g) Dried Solids Storage.

(1) A storage facility may store dewatered solids with a solids content of greater than or equal to 50% in a bin or covered facility.

(2) A enclosed storage structure must be mechanically ventilated with at least 20 air exchanges per hour and must have an odor control system for the exhaust.

§217.252. Final Use or Disposal of Sludge.

(a) The report must identify the final use or final disposal of the sludge. The use, disposal, and transportation of sludge must be conducted in accordance with the requirements contained in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) Quantities of Sludge.

(1) An estimate of the quantity of solids generated by the treatment process from a similar full-scale facility or pilot study must be included in the report.

(2) A mass balance approach must be used to determine the quantity of sludge produced at a facility.

(c) Final Disposition. The use or disposal option must be based on the characteristics of the sludge.

(d) Sludge Constituents.

(1) Metals and their concentration in sludge must be determined using Standard Method's laboratory test procedures and must be less than the levels specified in §312.63 of this title (relating to Metal Limits (Other Than Domestic Septage)).

(2) A sludge processing system must be designed to reduce pathogens in sludge to levels compliant with Chapter 312 of this title concerning the ultimate use or disposal method.

(3) A sludge processing system must be designed to produce digested sludge that complies with Chapter 312 of this title with regards vector attraction.

(e) Emergency Provisions for Sludge Disposal. A design must include a secondary method of sludge disposal in the event of conditions that prevent the use of a facility's primary use or disposal method. A secondary method must be included in the report.

(f) Weather Factors. Weather factors such as rainfall, wind conditions, and humidity must be included in the determination of the use or disposal of sludge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER K. CHEMICAL DISINFECTION

30 TAC §§217.271 - 217.283

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.271. Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination System Redundancy Requirements.

(a) Each Cl_2 disinfection and SO_2 and dechlorination system must include at least two banks of chemical storage cylinders.

(b) A bank of cylinders must include a device that automatically switches from an empty bank of cylinders to a full bank of cylinders in a manner that ensures continuous disinfection.

(c) A facility must have sufficient space to store a bank of empty cylinders.

(d) A chemical delivery system must be designed so that the pound per day requirements in §217.272 of this title (relating to Capacity and Sizing of Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination) are met with the largest chlorinator, sulfonator, or evaporator out of service.

(e) A chemical delivery system must include a backup pump for any injector water supply system requiring a booster pump.

§217.272. Capacity and Sizing of Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems.

(a) The capacity of a Chlorine (Cl_2) or a Sulfur Dioxide (SO_2) gas withdrawal system must be based on the peak flow, in compliance with §217.32(a)(1) of this title (relating to Organic Loadings and Flows) and the equation in the following figure:
Figure: 30 TAC §217.272(a)

(b) The following figure establishes the minimum acceptable design Cl_2 dosage for disinfection:
Figure: 30 TAC §217.272(b)

(c) A dechlorination system design must include at least one unit of SO_2 gas to dechlorinate at least one unit of Cl_2 gas.

§217.273. Cylinder Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems.

(a) Cylinder Withdrawal Rates.

(1) Gas Withdrawal. The gas withdrawal rate per cylinder must be based on the Equation K.2 located in the following figure and the variables from Table K.2 located in the following figure:
Figure: 30 TAC §217.273(a)(1)

(A) If the cylinders are not stored in a temperature-controlled enclosure, the report must include the ambient temperature based on the lowest seven-day average of the average daily local temperatures over the last ten years, as measured at the nearest National Oceanic and Atmospheric Administration's National Weather Service weather station.

(B) Heating blankets on Chlorine (Cl_2) gas cylinders are prohibited.

(2) Liquid Withdrawal. If liquid withdrawal from one-ton cylinders is proposed, the following are the maximum withdrawal rates:

(A) 9,600 pounds (lbs)/day of Cl_2; and

(B) 7,200 lbs/day of Sulfur Dioxide (SO_2).

(b) Cylinders per Bank. The number of cylinders per cylinder bank must be based on the equation in the following figure:
Figure: 30 TAC §217.273(b)

§217.274. Dosage Control for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems.

A new or modified Chlorine (Cl_2) and Sulfur Dioxide (SO_2) system must include automatic dosage control that adjusts the dosage of Cl_2 or SO_2 relative to the flow of an effluent stream.

§217.275. Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems Using 150 pound (lb) Cylinders.

(a) Heated Rooms.

(1) A Chlorine (Cl_2) and Sulfur Dioxide (SO_2) system that uses 150-pound (lb) cylinders must be located indoors at a minimum

temperature of 65 degrees Fahrenheit. This provision applies to all chemical feed equipment, including the cylinders, chlorinators, and/or sulfonators.

(2) An unconnected cylinder may be stored outdoors, but the cylinder must reach at least 65 degrees Fahrenheit before being connected to a system.

(b) Heating Blankets.

(1) Heating blankets on Cl_2 gas cylinders are prohibited.

(2) An SO_2 cylinder may have a heating blanket only in a temperature-controlled room to increase the temperature inside a cylinder above the ambient room temperature.

(A) The report must include a calculation determining the setting for a heating blanket to maintain a cylinder temperature of less than 100 degrees Fahrenheit.

(B) A heating blanket must include a mechanism that ensures that a blanket does not heat a cylinder above 100 degrees Fahrenheit.

(C) A cylinder with a heating blanket that is connected to a disinfection system must have a downstream pressure-reducing valve.

(D) An SO_2 system must be capable of deactivating a heating blanket if high pressure is detected downstream.

(c) Separation. The design of a disinfection system using 150-lb cylinders must ensure that Cl_2 and SO_2 are not in the same room and will never come into contact with each other.

§217.276. Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems Using Gas Withdrawal from One-Ton Cylinders.

(a) Heated Rooms. The chlorinators and sulfonators for a system using one-ton cylinders must be indoors and at a minimum temperature of 65 degrees Fahrenheit.

(b) Outdoor Storage.

(1) If one-ton cylinders are stored outdoors, the system sizing must be done in accordance with §217.273(a) of this title (relating to Cylinder Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems). Calculations supporting system sizing must be included in the report.

(2) If a one-ton cylinder is stored outdoors, a storage structure must:

(A) protect a cylinder from direct sunlight; and

(B) allow safe removal and replacement of a cylinder.

(3) A one-ton cylinder stored outdoors may have heated pipes to prevent gas from liquefying when a chemical enters a heated building or when gas cools in a pressure pipe.

(c) Heating Blankets.

(1) A heating blanket on a one-ton Cl_2 gas cylinder is prohibited.

(2) A one-ton SO_2 cylinder may have a heating blanket to increase the operating temperature of an SO_2 system. A design must specify the temperature a heating blanket may be set to maintain an adequate temperature inside a cylinder, based on the lowest seven-day average of the local daily low temperatures over the last ten years.

(3) The ambient temperature must be used to calculate a cylinder withdrawal rate in §217.273(a) of this title.

(4) A heating blanket must include a mechanism to prevent heating a cylinder to more than 100 degrees F.

(5) A dechlorination system must have a pressure-reducing valve downstream from the cylinders connected to the system and a high-pressure interlock to deactivate any heating blanket.

(d) Separation.

(1) The housing of the SO_2 feed equipment for one-ton cylinders must be in a separate room from the chlorination feed equipment and cylinders.

(2) A system with Cl_2 and SO_2 one-ton cylinders must separate the feed equipment from the cylinders with a gas tight wall, except for the following exceptions:

(A) One-ton SO_2 cylinders and Cl_2 cylinders may be stored in the same area if:

(i) the cylinders are stored outdoors;

(ii) an SO_2 outlet valve and a Cl_2 outlet valve are separated by at least 10 feet; and

(iii) the Cl_2 equipment and storage containers are marked differently than SO_2 equipment and storage containers.

(B) SO_2 and Cl_2 chemical feed equipment may be stored in the same room if:

(i) both systems are remote vacuum type;

(ii) no pressure gas pipes are in the room;

(iii) no cylinders are stored in the room; and

(iv) the design ensures that Cl_2 and SO_2 cannot be mixed.

§217.277. Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems Using Liquid Withdrawal from One-Ton Cylinders.

(a) Heated Rooms. The chlorinators and sulfonators must be located indoors at a minimum temperature of 65 degrees Fahrenheit.

(b) Outdoor Storage. The Chlorine (Cl_2) and Sulfur Dioxide (SO_2) cylinders for systems using liquid withdrawal may be stored outdoors without reducing the withdrawal rates assumed in §217.273(a)(2) of this title (relating to Cylinder Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems).

(c) Separation. The separation requirements for a one-ton cylinder liquid withdrawal systems are the same as those for a one-ton cylinder gas withdrawal system under §217.276(d) of this title (relating to Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems Using Gas Withdrawal from One-Ton Cylinders).

§217.278. Housing Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems.

(a) Floor Drains. A floor drain from a Cl_2 or SO_2 feed or storage room must not drain to any pipe system connected to any other room of the facility.

(b) Doors and Windows.

(1) Each door must:

(A) open to the outside of the building; and

(B) include panic hardware.

(2) Each room must have at least one clear, gas-tight window in an exterior door.

(3) A room may have additional windows to ensure the disinfection and dechlorination systems may be viewed without entering an enclosed room.

(c) Ventilation.

(1) An enclosed storage and feed room must have forced mechanical ventilation with at least 1.0 air exchange every 3.0 minutes.

(2) Exhaust equipment must have:

(A) external controls; and

(B) leak detection equipment.

(3) A fan must be located at the top of the room to push air across the room and through an exhaust vent located at the bottom of the room on the opposite side.

(4) An exhaust system may use negative pressure ventilation instead of forced mechanical ventilation if the facility has gas containment and treatment as prescribed by the National Fire Protection Association's Uniform Fire Code.

(5) A vent from the SO_2 or Cl_2 gas feed systems must exhaust to a point that is:

(A) not frequented by facility staff;

(B) not near a fresh air intake; and

(C) clearly marked.

(d) Gas Detectors and Protection.

(1) An area containing Cl_2 or SO_2 under pressure must have a gas detector and alarm system.

(2) An area used for handling pressurized gases must have respiratory and protective equipment that meets the requirements of the National Institute for Occupational Safety and Health.

(A) The respiratory equipment must be immediately accessible and included in the facility's operation and maintenance manual.

(B) The storage of respiratory equipment in any room where gas under pressure is stored or used is prohibited.

(C) Instructions for using the respiratory equipment must be kept with or posted next to the equipment.

(D) The respiratory equipment must use compressed air and must have at least a 30-minute capacity.

§217.279. Equipment and Material Requirements for Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems.

(a) All equipment and material used in a disinfection and dechlorination system must meet the manufacturer's recommendations.

(b) Storage Orientation.

(1) One-ton cylinders must be stored horizontally on trunnions.

(2) A 150-pound cylinder must be stored vertically and secured by a clamp or chain.

(c) Measurements. A Chlorine (Cl_2) and Sulfur Dioxide (SO_2) system must have a scale for determining the amount of chemical used daily and the amount of chemical remaining in a container.

(d) Pressure Pipe Systems for Gas Transport.

(1) Gas transport pressure pipe and fittings must be at least equivalent to Schedule 80 black seamless steel pipe and 2,000 pound forged steel fittings.

(2) The use of polyvinyl chloride (PVC) in a pressure pipe system is prohibited.

(3) A one-ton cylinder system must use a gas filter upstream of a pressure-reducing valve.

(4) A pressure pipe system must have a pressure-reducing valve if:

(A) the system has a length of supply pipes greater than 20 feet;

(B) an SO_2 system has a heating blanket; or,

(C) there are pressure pipes on the discharge side of an evaporator.

(5) A pressure pipe at the gas discharge side of an evaporator must have a rupture disk and a high-pressure alarm that warns facility staff of disk rupture.

(6) A gas pipe entering a chlorinator or sulfonator must have a heated leg drop sediment trap.

(7) An SO_2 system must have at least the equivalent of 316 stainless steel seat and stem.

(8) A Cl_2 system must have at least the equivalent of a Monel seat and stem.

(e) Pressure Pipe Systems - Liquid Transport.

(1) The use of PVC in a pressure pipe system is prohibited.

(2) The manifolding of one-ton containers for simultaneous liquid chemical withdrawal is prohibited.

(3) A liquid pipe system must include a rupture disk, a pressure switch to warn facility staff of disk rupture, and an expansion chamber.

(f) Vacuum pipes.

(1) Vacuum pipes and fittings downstream of a vacuum regulator must be the equivalent of PVC or 316 stainless steel.

(2) A vacuum pipe must have socket joints.

(g) Diffusers. The report must include calculations that verify a minimum velocity of 10 feet per second through any Cl_2 or SO_2 system diffuser, unless a diffuser has a mechanical mixer.

§217.280. Design of Sodium Hypochlorite (NaClO) Disinfection and Sodium Bisulfite ($NaHSO_3$) Dechlorination Systems.

(a) Redundancy. A Sodium Hypochlorite (NaClO) and Sodium Bisulfate ($NaHSO_3$) system must include at least two chemical solution pumps and must ensure that the capacity requirements of §217.272(b) of this title (relating to Capacity and Sizing of Chlorine (Cl_2) Disinfection and Sulfur Dioxide (SO_2) Dechlorination Systems) are met with the largest pump out of service.

(b) Capacity and Sizing. The size of a chemical liquid solution pump and pipe system must be determined as follows:

(1) NaClO.

(A) Determine Pounds Per Day of Chlorine (Cl_2) Required. Figure: 30 TAC §217.272(b), Table K.1 and Figure: 30 TAC §217.272(a), Equation K.1 of this title must be used to determine the pounds per day of Cl_2 required.

(B) Cl_2 Determination. The pounds of available Cl_2 per gallon of NaClO solution must be determined using values and appropriate references supplied by chemical manufacturer.

(C) Gallons per Hour Determination. In order to size the chemical metering equipment, the gallons per hour must be calculated using the values found in the following equation:
Figure: 30 TAC §217.280(b)(1)(C)

(2) $NaHSO_3$.

(A) Figure: 30 TAC §217.280(b)(1)(C), Equation K.4 of this subsection must be the basis to determine the pounds per day of chemical required.

(B) The minimum amount of $NaHSO_3$ needed to dechlorinate one pound of Cl_2 is 1.465 pounds. The pounds per day of Cl_2 that must be dechlorinated, as determined in subparagraph (A) of this paragraph, multiplied by 1.465 pounds of $NaHSO_3$ per pound of Cl_2, determines the pounds of $NaHSO_3$ needed.

(C) The gallons per hour (R) of $NaHSO_3$ solution needed from the chemical metering equipment must be calculated using the following equation:
Figure: 30 TAC §217.280(b)(2)(C)

(c) Dosage Control. A dosage control system may be positive pressure or vacuum and must automatically adjust the NaClO or $NaHSO_3$ feed rate to correspond to the flow of the effluent stream.

(d) Chemical Handling.

(1) Storage Tank Sizing.

(A) A bulk storage facility for NaClO with a solution strength greater than or equal to 10% must not be sized to store more than a 15-day supply, unless a residual analyzer or oxidation-reduction potential (ORP) monitor provides automatic feed control to compensate for solution degradation.

(B) For NaClO with a solution strength less than 10%, and where a residual analyzer or ORP monitor is provided, a bulk storage facility must not be sized to store more than a 30-day supply.

(C) A facility with a design flow equal to or greater than 1.0 million gallons per day must have at least two chemical storage tanks.

(2) Temperature considerations.

(A) If a NaClO tank is not stored indoors, the tank must be opaque or otherwise block sunlight penetration.

(B) An outdoor $NaHSO_3$ storage facility and pipes must be insulated and heat traced in a location where the ambient temperature is below 40 degrees F, based on the lowest 7-day average of the average daily local temperatures over the last 10-years, as measured at the nearest National Oceanic and Atmospheric Administration's National Weather Service weather station.

(e) Equipment and Materials.

(1) Equipment and materials used for storage, pumping, and transport of NaClO must be used according to the manufacturer's recommendations and suitable for use in a corrosive chemical environment.

(2) Equipment and materials used for storage, pumping, and transport of $NaHSO_3$ must be used according to the manufacturer's recommendations and suitable for use in an acidic chemical environment.

(f) Safety.

(1) Ventilation. A chemical storage area must be sufficiently ventilated to prevent buildup of fumes.

(2) Liquid-depth indicators. A storage tank must have an external liquid-depth indicator.

(3) Spill containment.

(A) A chemical storage area must have secondary containment equal to 125% of the volume of the largest storage tank.

(B) A manifolded tank must have secondary containment equal to 125% of the cumulative manifolded tank volume, unless the pipe system prevents a combined release.

(C) A tank must be placed on an equipment pad that is:

(i) elevated above the secondary containment maximum liquid level; or

(ii) provided with positive drainage from below the tank.

(D) A containment system for NaClO must be separate from a containment system for $NaSO_3$.

(4) Emergency and Protective Equipment. A chemical storage area must have at least one emergency eyewash station and adequate personal protective equipment for all facility staff working in the area.

§217.281. Application of Chlorination and Dechlorination Chemicals.

(a) Mixing Requirements.

(1) Chlorination Unit. A chlorination unit must be constructed so that the applied chlorine (Cl_2) is thoroughly mixed with the wastewater prior to entry into a Cl_2 contact chamber.

(2) Mixing Zones. A mixing zone within a Cl_2 contact basin of an existing facility must not be considered as part of the volume needed for disinfection.

(3) Cl_2 and Sodium Hypochlorite (NaClO). A disinfection system must apply the Cl_2 gas or solution in a highly turbulent flow regime created by in-line diffusers, mechanical mixers, or jet mixers. Effective initial mixing for the mean velocity gradient (G value) in the area of turbulent flow must exceed 500 per second^{-1}.

(4) Sulfur Dioxide (SO_2) and Sodium Bisulfite ($NaHSO_3$):

(A) The mixing for an SO_2 and $NaHSO_3$ system must ensure compliance with all relevant permit requirements.

(B) A disinfection system must provide a mean velocity gradient (G value) of at least 250 per second^{-1}.

(b) Disinfection Contact Basins.

(1) A Cl_2 contact basin must provide a minimum Cl_2 contact time of 20 minutes at the peak flow.

(2) The design of a Cl_2 contact chamber must prevent short-circuiting and that a the wastewater is retained in a contact basin for at least 20 minutes.

(3) The report must include supporting data from a contact basin design model, performance data of a similar design, or a field tracer study.

(c) Dechlorination Contact Time.

(1) A disinfection system must have sufficient mixing and contact time between the disinfected wastewater and a dechlorinating agent to ensure continuous compliance with the permitted Cl_2 limits.

(2) A design must prevent short-circuiting and provide a minimum contact time of 20 seconds at the peak flow.

§217.282. Other Chemical Disinfection and Dechlorination Processes.

Any chemical disinfection or dechlorination process not discussed in this subchapter, such as chlorine dioxide, ozone, tablet or powder disinfection and dechlorination processes, and liquid solution disinfection and dechlorination processes are subject to the requirements of §217.7(b)(2) of this title (relating to Types of Plans and Specifications Approvals).

§217.283. Post-Disinfection Requirements.

(a) A design must include a sufficient number of sampling points to allow an operator to monitor the system. Sampling points must be identified in the report.

(b) Dissolved Oxygen (DO) Requirements.

(1) A disinfection system must include post-aeration to ensure compliance with DO requirements in the facility's wastewater permit.

(2) If the wastewater permit requires a minimum DO of 5.0 milligrams per liter or greater, the report must include the calculations that demonstrate how a post-aeration system will maintain the minimum DO level.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. ULTRAVIOLET LIGHT DISINFECTION

30 TAC §§217.291 - 217.300

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.291. Ultraviolet Light Disinfection System Definitions.

(a) Module--A grouping of ultraviolet lamps electrically and physically connected to each other.

(b) Bank--A grouping of modules that:

(1) can be automatically turned on and off in relation to effluent flow variations;

(2) is electrically or physically connected together or physically adjacent to each other; and

(3) forms a complete unit capable of treating the full channel design width and depth.

§217.292. Ultraviolet Light Disinfection Systems Effluent Limitations.

Ultraviolet light disinfection systems must be designed to comply with at least the effluent limits relating to fecal coliform or *e.coli* in the facility's wastewater permit.

§217.293. Ultraviolet Light Disinfection Systems Redundancy Requirements.

(a) An ultraviolet (UV) disinfection system must include a least two banks positioned in series in a disinfection channel.

(b) A UV light disinfection system must be designed so that the dosage requirements determined in §217.295 of this title (relating to Ultraviolet Light Disinfection Dosage and System Sizing) are met when a bank of UV lamps in each channel is out of service at peak flow, as defined in §217.32(a) of this title (relating to Organic Loadings and Flows).

§217.294. Ultraviolet Light Disinfection Systems Monitoring and Alarms.

(a) An ultraviolet (UV) system shall continuously monitor and display locally at the system control panel the following:

(1) the flow rate in each disinfection channel;

(2) the relative intensity of a lamp in one bank of a disinfection channel;

(3) the operational status and condition of each bank;

(4) the on/off status of each lamp in the system;

(5) the number of operating hours of each bank in the system; and

(6) the total number of hours of operation for each bank in the system.

(b) Flow pacing shall be accomplished by turning the appropriate number of banks on or off in proportion to effluent flow. Set points used to energize the banks shall be operator adjustable.

(c) A UV system must include an alarm system.

(1) A facility that is not supervised 24-hours per day must have telemetry with battery backup as part of the alarm system. A telemetry system must notify a facility operator in the event of a UV alarm.

(2) A UV system must include the following minimum alarm conditions:

(A) A minor alarm must activate if:

(i) the relative UV intensity of the system is less than 45%; or

(ii) there is a lamp outage.

(B) A major alarm must activate if:

(i) the relative UV intensity of the system is less than 25% (after 100 hour burn in);

(ii) more than 10% of the lamps fail;

(iii) there is a loss of flow signal upon failure of a bank to energize; or

(iv) there is an outage of any module or bank in series.

§217.295. Ultraviolet Light Disinfection Dosage and System Sizing.

(a) A system must be sized based upon the results of an independent bioassay. The following are the minimum criteria.

(1) The lamp and ballast in a bioassay test system must have the same characteristics and 254 nanometers (nm) output as the full-scale system.

(2) Spacing of the lamps in a bioassay test unit must be the same as in the full-scale system.

(3) A minimum of 80 lamps must be present in a bioassay test unit, with the arrangement of lamps mirroring the full-scale system.

(b) If a variable output lamp is used, detailed documentation from the lamp manufacturer must be provided to document 254nm ultraviolet output, operational wattage versus lamp input power (voltage and current), along with data demonstrating power requirements to the lamp and ballast to achieve the stated output.

§217.296. Ultraviolet Light Disinfection Bioassay Test Procedure.

(a) A bioassay procedure must conform to the publication, *USEPA (1986) Design Manual: Municipal Wastewater Disinfection*, EPA/625/1-86/021. The following minimum standards are required for proper validation:

(1) The test organism must be introduced into buffered distilled water.

(2) The depth of the suspension must be 1.0 centimeter (cm). Mathematical depth correction is prohibited.

(3) The organism density must be at least 10^5 plaque forming units or colony forming units per milliliter.

(4) The dose response relationship must be based on a range of five to seven exposure times.

(5) Runs must be in triplicate, each from a separate dilution of the stock suspension.

(6) Three dilutions should be plated in triplicate.

(7) A minimum of two controls (unexposed) must be sampled with each dose run.

(8) The diameter of the Petri dish and collimating tube should be the same.

(9) The narrow band detector used for intensity determination must be calibrated for accuracy.

(10) 254 nanometer ultraviolet must be measured and reported as the dose response.

(11) Aggressive or rapid stirring of the suspension is prohibited.

(12) Intensity shall be measured at the exact height of the surface of the suspension. Mathematical intensity correction for a different distance is not acceptable.

(b) Lamp intensity in the flow through test reactor shall be set at 75% of a new 100% lamp after a 100-hour burn in stabilization period conducted at the same power input to the lamp.

(c) Effluent percent transmission during the full scale testing shall be established in accordance with the terms and conditions of the facility's wastewater permit.

§217.297. Ultraviolet Light Disinfection Reactor Design.

(a) An approach channel must be unobstructed and have a minimum length of 4.0 feet before the first ultraviolet (UV) bank.

(b) The downstream channel length must be unobstructed for a minimum length of 4.0 feet following the last bank of UV lamps and before a fluid-level control device.

(c) Inlet channels must be designed to provide equal flow distribution across all UV channels.

(d) A downstream discharge point of a reactor must include a level control that ensures that the UV lamps remain submerged at a near-constant depth, regardless of flow.

(e) The upstream and downstream portions of a UV reactor channel between UV banks must be covered to shut out all natural light.

§217.298. Ultraviolet Light Disinfection System Cleaning and Maintenance.

(a) A design must include provisions for draining each ultraviolet (UV) disinfection channel and routine cleaning of the UV lamps and modules.

(b) A UV system must include the following spare parts, as a percentage of the total system equaling at least:

(1) 5% of the lamps;

(2) 2% of the ballasts; and

(3) 5% of the quartz sleeves.

(c) For maintenance purposes, the owner must provide a minimum of one spare module for each bank that is parallel to flow.

§217.299. Ultraviolet Light Disinfection System Safety.

Anyone in a reactor area must wear appropriate personal protection, including at least an ultraviolet (UV) UV-rated face shield and safety glasses or goggles.

§217.300. Post-Disinfection Requirements.

(a) Sampling Points. A design must include a sufficient number of sampling points, including at least one point immediately downstream of an ultraviolet (UV) system, to allow an operator to monitor the system. Sampling points must be identified in the report.

(b) Dissolved Oxygen (DO) Requirement.

(1) A UV disinfection system must include post-aeration to ensure compliance with DO requirements in the facility's wastewater permit.

(2) If the wastewater permit requires a minimum DO of 5.0 milligrams per liter or greater, the report must include the calculations that demonstrate how a post-aeration system will meet the minimum DO level.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER M. SAFETY

30 TAC §§217.321 - 217.333

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code (TWC), §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed new rules implement TWC §§5.013, 5.103, 5.105, 5.120, 26.027, 26.034, and 26.121.

§217.321. Safety Design.

(a) The safety aspects of a treatment facility design must be based on *Design of Municipal Treatment Plants*, WEF Manual of Practice No. 8, published by the Water Environment Federation, or other safety design guidelines approved by the executive director.

(b) Occupational safety and health hazards and risks to workers and the public must be addressed in the design of collection system and treatment facility equipment and processes.

(c) A facility design must incorporate processes that use the least hazardous and toxic chemicals and the least amounts of those chemicals that will effectively treat and disinfect the influent so that the effluent and the sludge meet the requirements in the associated wastewater permit and do not degrade the water quality in a receiving stream or cause accumulation in a land application area.

(d) Where applicable, a design must follow the guidelines established under 29 Code of Federal Regulations, Part 1910.

(e) A design must demonstrate compliance with this section by implementing §217.292 of this title (relating to Safety and Security Audits) and §217.293 of this title (relating to and Hazardous Operation and maintenance).

§217.322. Safety and Security Audits.

(a) Safety Audit.

(1) The owner of an existing facility being modified or expanded must conduct a safety audit of the facility that evaluates injuries and incidents at the facility during the prior three-year period in order to determine the locations, causes, types of injuries, and jobs being performed when the injuries or incidents occurred.

(2) A safety audit must identify the locations and jobs associated with injuries or incidents and any subsequent corrective action taken or planned.

(3) A design must include measures that address the needed corrective actions identified in the safety audit as part of any modification or expansion project.

(b) Security Audit. The owner of an existing facility may conduct a security audit. The security audit may be based on the *Asset Based Vulnerability Checklist for Wastewater Utilities* by the Association of Metropolitan Sewerage Agencies or an equivalent security audit protocol.

§217.323. Hazardous Operation and Maintenance.

(a) An owner shall perform an analysis of operational and maintenance tasks to identify potentially hazardous situations for a new, expanded, or modified facility.

(b) For those identified potentially hazardous tasks, a list must be prepared for each task that identifies the necessary:

(1) tools, equipment, and supplies;

(2) fixed and portable lifting equipment;

(3) fixed and portable monitoring equipment;

(4) personal protective equipment and clothing;

(5) warning signs and guards; and

(6) first-aid supplies.

(c) The tools at a facility must be sufficient to:

(1) allow workers to safely and properly operate equipment;

(2) perform required preventive maintenance, in compliance with the manufacturers' minimum requirements;

(3) make repairs; and

(4) maintain processes, pumps, motors, blowers, compressors, laboratory, instrumentation, and other equipment.

§217.324. Chemical Handling.

(a) An owner must make available appropriate protective equipment for breathing, eyes, face, head, and extremities for operating staff who will handle any chemical known to pose a potential health risk and must train the facility staff in the use of the equipment.

(b) A facility that uses any chemical must be designed to provide eye washing and showering systems in all appropriate locations.

(c) All protective equipment and chemical neutralizers must be stored near but outside a chemical storage area.

§217.325. Railings, Ladders, Walkways, and Stairways.

(a) An opening in a railing must have a removable chain.

(b) A open valve box, pit, tank, or basin that extends less than 4.0 feet above ground must have a railing capable of preventing a person from falling into it.

(c) A steep or vertical ladder is acceptable only for infrequent access to equipment.

(d) A ladder must have flat safety tread rungs and extensions at least 1.0 foot out of a vault.

(e) A walkway above an open tank must have a raised edge designed to prevent a person from slipping off the walkway.

(f) Walkways, steps, landings, and ladder rungs must have a non-slip finish.

(g) An overhead pipe must have at least a 7.0 foot clearance, unless the pipe is padded to prevent head injury and has a warning sign.

§217.326. Electrical Code.

The electrical elements of a facility or system design must conform to local electrical codes or to the National Electric Code if the facility is located in an area that does not have a local electrical code.

§217.327. Non-Potable Water.

Each hydrant and outlet for non-potable water must be clearly marked as "NON-POTABLE WATER" or "UNSAFE WATER."

§217.328. Facility Access Control.

(a) A facility must be completely fenced and have a lockable gate at each access point.

(b) A facility containing an open tank must have hazard signs stating "DANGER - OPEN TANKS - NO TRESPASSING" within visible sighting of each other on each gate and levee.

(c) A facility containing an open tank must be surrounded by:

(1) at least an 8.0 foot solid material or chain-link fence topped with at least one strand of barbed-wire;

(2) at least a 6.0 foot high solid material or chain-link fence topped with three strands of barbed-wire that reach at least 6.0 inches above the fence for a total of 78 inches; or

(3) a 5-strand barbed-wire fence may be used in a rural area for fencing lagoons, or overland-flow plots, in lieu of chain-link or board fencing required by paragraphs (1) and (2) of this subsection.

(d) A facility must have at least one all-weather access road with the driving surface situated above the 100-year flood plain.

§217.329. Color Coding of Pipes.

(a) A new facility must have color-coded pipes.

(b) A new facility must have tracer tape for each non-metallic underground pipe.

(c) An existing facility must color-code and install tracer tape for each pipe associated with an up-grade or modification.

(d) A non-potable water pipe must be painted purple and be stenciled "NON-POTABLE WATER" or "UNSAFE WATER."

(e) A design must use the following color-coding for pipes:

(1) Sludge - brown;

(2) Natural gas - red;

(3) Potable water - light blue;

(4) Chlorine - yellow;

(5) Sulfur Dioxide - lime green with yellow bands;

(6) Sewage - grey;

(7) Compressed air - light green;

(8) Heated water - blue with 6 inch red bands spaced 30 inches apart;

(9) Power conduit - in compliance with the National Electric Code;

(10) Reclaimed water - purple;

(11) Instrument air - light green with dark green bands;

(12) Liquid alum - yellow with orange bands;

(13) Alum (solution) - yellow with green bands;

(14) Ferric chloride - brown with red bands;

(15) Ferric sulfate - brown with yellow bands;

(16) Polymers - white with green bands;

(17) Ozone - stainless steel with white bands;

(18) Raw water - tan; and

(19) Effluent after clarification - dark green.

§217.330. Public Drinking Water Supply Connections.

(a) Connection between a public drinking water supply system and a wastewater treatment facility must be made through an air gap or a reduced-pressure principle backflow prevention assembly (RPBA) in accordance with American Water Works Association (AWWA) Standard C511-97 or AWWA Manual M14.

(b) Each RPBA must be tested annually.

(c) RPBA test results and maintenance records must be retained onsite for at least three years.

§217.331. Freeze Protection.

A horizontal surface subject to freezing temperatures and water accumulation must be sloped to prevent ice formation.

§217.332. Noise Levels.

(a) An area accessed by staff must be designed to comply with 29 Code of Federal Regulations §1910.95.

(b) Removable noise attenuation is prohibited.

§217.333. Confined Spaces.

(a) A design must, to the extent practicable, avoid confined spaces as defined in 29 Federal Code of Regulations §1910.146.

(b) A ventilating manhole must be equipped with a connection for a portable ventilator.

(c) A confined space entry must be conducted according to the requirements of 29 Code of Federal Regulations §1910.146.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.72

The Texas Commission on Environmental Quality (commission) proposes to amend §305.72, regarding Underground Injection

Control (UIC) Permit Modifications at the Request of the Permittee.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This rulemaking amends §305.72 in order to implement House Bill (HB) 2654, 80th Legislature, 2007, and its amendments to Texas Water Code (TWC), §27.021. House Bill 2654 removed the requirement for a contested case hearing under the provisions of TWC, §27.018, for Class I injection wells that dispose of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals. House Bill 2654 does not exclude Class I injection wells for the disposal of any other waste streams from the requirement to provide an opportunity for a contested case hearing.

The purpose of this rulemaking is to subject permit amendments to the opportunity for a contested case hearing when the amendment is to a Class I injection well permit authorizing only disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals and the amendment requests authority to dispose of other types of wastes. The proposed rulemaking specifies that a permit for a Class I injection well used only for the disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals may not be administratively modified, under §305.72(b)(4), in order to add waste streams disposed in the Class I injection well other than nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals. A permit change to dispose of other types of wastes will require a major amendment under §305.62(c)(1)(A), which provides an opportunity for a contested case hearing. This rulemaking will ensure that the hearing requirements of TWC, §27.018 for conventional Class I injection well permits will be retained after a permit is issued under the provisions of HB 2654. Amendments to 30 TAC Chapters 50, 55 and 331 to implement HB 2654 are also proposed in this issue of the *Texas Register*.

SECTION DISCUSSION

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

The proposal would amend §305.72(b)(4) to specify that the kind of permit modification allowed to a conventional Class I injection well permit by this paragraph shall not include modifying a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals to a conventional Class I injection well permit. This amendment effectively precludes a permit holder for this type of Class I injection well (used only for the disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals) from adding other types of waste streams without providing the opportunity for a contested case hearing.

The commission proposes an administrative change in §305.72(b)(4) to correct the spelling of "judgement" to "judgment."

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The agency will utilize existing resources to develop rules and guidelines for a general permit to authorize the use of Class I injection wells for disposal of nonhazardous desalination concentrate or drinking water treatment residuals.

This rulemaking implements HB 2654, 80th Legislature, 2007 and aligns state standards for Class I wells disposing only of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals with federal Class I injection well standards for nonhazardous wells. House Bill 2654 allows the commission to issue a general permit to authorize the use of a Class I injection well for disposal of nonhazardous desalination concentrate or drinking water treatment residuals and eliminates the necessity of obtaining a permit from the commission when the Railroad Commission of Texas authorizes the use of these wastes as appropriate injection fluids for enhanced recovery purposes. The proposed rule is part of the agency's proposal to establish regulations to govern the general permit, and they amend the appropriate sections of Chapter 305 to ensure that, if wastes, other than those authorized by the proposed general permit, are modified, then the change will constitute a major permit amendment and provide the opportunity for a contested case hearing. This proposed rulemaking is part of amendments proposed for appropriate sections of Chapters 50, 55, and 331 to establish a general permit program for these types of Class I injection wells. This fiscal note addresses only the fiscal implication of proposed changes to Chapter 305, and the fiscal implications for needed amendments to other chapters are addressed in separate fiscal notes.

The proposed amendment to Chapter 305 would ensure that, if the waste stream permitted under the proposed general permit is modified to include waste other than nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, the owners or operators of the Class I injection well would be subject to the requirements of a major permit amendment. These requirements include the chance that the well owners would become subject to a contested case hearing as well as public notice and meeting requirements.

The proposed rule is not expected to have a significant fiscal impact on local governments that have a general permit to operate a Class I injection well for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals unless they decide to dispose of other types of wastes in these injection wells. If a local government decides to modify the waste stream, it will be subject to a contested case hearing and other regulations governing other types of injection wells or disposal methods. A contested case hearing could cost as much as $500,000 although it would likely cost less. Public notices could cost as much as $1,000 to $3,000 per notice depending on the circulation size of the newspaper used. If there is sufficient public interest to warrant a public meeting, meeting expenses for an applicant could range from $1,700 to $4,700 depending on the cost of notices and the price for renting a meeting space. It is unknown how many local governments might choose to modify their waste streams and become subject to the proposed rule.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be continued protection of public health and the environment by requiring owners of Class I injection wells authorized by general permit to dispose of nonhazardous desalination concentrate or drinking

water treatment residuals and who desire to change the waste stream to comply with major permit amendment requirements.

Regulated entities that elect to modify the waste stream to be disposed of in a Class I injection well authorized by the proposed general permit issued for a Class I injection well for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals will be subject to a contested case hearing and other regulations governing other types of injection wells or disposal methods. A contested case hearing could cost as much as $500,000 although it would likely cost less. Public notices could cost as much as $1,000 to $3,000 per notice depending on the circulation size of the newspaper used. If there is sufficient public interest to warrant a public meeting, meeting expenses for an applicant could range from $1,700 to $4,700 depending on the cost of notices and the price for renting a meeting space.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Typically, small or micro-businesses do not own or operate Class I injection wells, and staff does not expect these businesses to request a general permit to operate a well of this type. If a small business does request a general permit to own or operate this type of Class I injection well and it elects to modify the wastes injected into the well, it can expect to incur the same costs for a contested case hearing as those incurred by local governments and large businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to protect human health and the environment and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not intended to reduce risks to human health from environmental exposure, nor does it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the proposed rulemaking is to implement HB 2654, passed during the 80th Legislature, 2007, and to revise criteria for authorizing Class I nonhazardous wells injecting desalination concentrate and other water treatment residuals from public water systems so that the state's rules are no more stringent than federal Class I nonhazardous injection well regulations. The specific intent of the proposed amendment to §305.27 is to protect the opportunity for a contested case hearing when a permittee proposes to add a type of waste other than desalination concentrate or drinking water treatment residuals to those permitted to be injected to its Class I injection well and the permit was issued without the opportunity for a contested case hearing. The rule substantially advances this purpose by providing that a minor modification shall not be used to add a waste stream other than desalination concentrate or drinking water treatment residuals to the permit of a Class I injection well issued without the opportunity for a contested case hearing.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendment would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking does not exceed any standard set by federal law but rather amends the rules so that they are no more stringent or restrictive than the federal regulations. The proposed rule does not exceed the requirements of state law under the TWC, Chapter 27. Further, the proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program. Finally, the rule is not proposed solely under the general powers of the agency, but rather specifically under TWC, §27.023(m), which allows the commission to adopt rules to implement the general permit authorizing use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals and TWC, §27.109, which authorizes the commission to adopt rules to implement TWC, Chapter 27 (regarding Injection Wells), as well as the other general powers of the agency.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKING IMPACT ASSESSMENT

The commission evaluated the proposed amendment to Chapter 305 and performed a preliminary assessment of whether the amendment would constitute a taking under Texas Government Code, Chapter 2007. The primary purposes of the proposed amendment are to implement HB 2654 and correct a misspelling identified during review of the rule language. The proposed amendment would substantially advance these purposes by amending §305.72 to ensure that additional waste streams shall not be added as minor modifications to a Class I injection well permitted in such a manner that no opportunity exists for a contested case hearing, and by changing the spelling of "judgement" to "judgment."

Promulgation and enforcement of the proposed amendment would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rule because the proposed amendment neither relates to, nor has any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rule. Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

The commission has no reasonable alternative that could accomplish the specific purpose of ensuring that additional waste streams are not added as minor modifications to a Class I injection well permitted in such a manner that no opportunity exists for a contested case hearing. Without the proposed amendment, a Class I injection well for disposal of only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals could be permitted under an individual permit or other authorization not requiring a contested case hearing, then add another waste stream as a minor modification without the public ever having an opportunity to contest the additional waste stream through the contested case hearing process.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 8, 2008 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-030-331-PR. The comment period closes April 14, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ms. Kathryn Hoffman, Waste Permits Division, (512) 239-6890.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

(a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

(1) correct typographical errors;

(2) require more frequent monitoring or reporting by the permittee;

(3) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgment [~~judgement~~] of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification, provided however, that this provision shall not be used to add a waste stream other than nonhazardous [~~desalination~~] brine produced by a desalination operation or nonhazardous drinking water treatment residuals to the permit of a Class I injection well issued without the opportunity for a contested case hearing;

(5) change construction requirements, provided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801192
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 239-0177

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CHAPTER 317. DESIGN CRITERIA FOR SEWERAGE SYSTEMS

30 TAC §§317.1 - 317.13, 317.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Environmental Quality (commission) proposes the repeal of §§317.1 - 317.13 and §317.15.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The repeal of Chapter 317, along with the proposal of new Chapter 217, accomplishes three tasks: implementing the commission's goal of having all water related rules under the Chapter 200 series; allowing the design criteria to be updated with current technology and engineering practices; and allowing the rules to be written with current rule language guidelines and be more logically organized.

Chapter 317 is irretrievably out of date. The changes needed to bring the design criteria for domestic wastewater systems into conformity with current rule writing standards, logical organization, and technical advances are better served by repealing Chapter 317 and proposing the updated criteria in Chapter 217. The commission last comprehensively revised Chapter 317 in 1986. Minor revisions in 1988, 1990, and 1994 addressed specific concerns, but did not bring the rules in line with advances in wastewater technologies or current commission rule standards. Additionally, repealing Chapter 317 allows the commission to make needed revisions to address requirements in current wastewater permits in Chapter 217.

SECTION BY SECTION DISCUSSION

The proposal will repeal all sections of Chapter 317, §§317.1 - 317.13 and §317.15. The requirements in these sections will be edited, updated, and proposed in new Chapter 217.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed repeal is in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed repeal.

The proposed repeal would eliminate rules governing domestic wastewater design criteria that will be replaced by new Chapter 217 design standards authorized under Chapter 26 of the Texas Water Code. No fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed repeal. However, new design standards are proposed in the new Chapter 217, and the fiscal note for Chapter 217 does take into consideration fiscal implications from the updating of the rules governing design criteria for domestic wastewater systems affecting state or local governments.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated from the changes seen in the proposed repeal will be the elimination of outdated design criteria which do not reflect current engineering practices and technology.

No fiscal implications are anticipated for businesses or individuals as a result of the proposed repeal for the first five years the repeal is in effect. However, regulated entities will be required to comply with the proposed requirements in Chapter 217 that will replace the obsolete sections being eliminated in this rulemaking. Any fiscal implications for businesses and individuals relating to the new design criteria proposed in Chapter 217 are discussed in that rule proposal.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed repeal. However, regulated entities will be required to comply with the proposed requirements in Chapter 217 that will replace the obsolete sections being eliminated in this rulemaking. Any fiscal implications for small or micro-businesses relating to the new design criteria proposed in Chapter 217 are discussed in that rule proposal.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed repeal does not adversely affect a small or micro-business in a material way for the first five years that the proposed repeal is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human

health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Repeal of the Chapter 317 rules will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this proposal is to repeal the outdated Chapter 317 design standards and issue new rules in Chapter 217 that update the design standards and criteria for wastewater treatment systems to current engineering practices and include recent advances in wastewater treatment technologies. The repeal of Chapter 317 does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, repealing the Chapter 317 rules does not exceed a federal standard because no applicable federal standard exists. Repeal of the Chapter 317 rules does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the repeal of the Chapter 317 rules was not developed solely under the general powers of the agency; but in conjunction with the specific authority of Texas Water Code, §26.034 to propose new design standards and criteria in Chapter 217.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of the rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to repeal the outdated design standards and criteria for wastewater treatment systems and issue a new set of rules in proposed Chapter 217 that updates those rules to meet current engineering practices and to include recent advances in wastewater treatment technologies. Also, the proposed Chapter 217 rules will allow increased flexibility to attain the design standards and criteria; update the standards and criteria reflecting the commission's domestic wastewater permitting practices; and amend and specify the commission's review and approval processes for proposed wastewater treatment facility projects. The repeal of the Chapter 317 rules will constitute neither a statutory nor a constitutional taking of private real property, impose no burdens on private real property because the repealed rules neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the repeal, which is a procedural mechanism for removing rules which are outdated, is consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the repeals will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 3, 2008 at 2:00 p.m. in E201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, Texas Register Team, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-044-217-PR. The comment period closes April 14, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Sherry Smith, Rule Project Manager, Water Quality Division, (512) 239-0571 or Louis C. Herrin, III, P.E., Rule Technical Manager, Water Quality Division, (512) 239-4552.

STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Water Code, §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §12.081, which provides the commission's continuing right of supervision over certain districts and authorities; §12.082, which provides the commission's duty to investigate fresh water supply district projects; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The proposed repeal implements Texas Water Code, §§5.013, 5.103, 5.105, 5.120, 12.081, 12.082, 26.027, 26.034, and 26.121.

§317.1. General Provisions.

§317.2. Sewage Collection System.

§317.3. Lift Stations.

§317.4. Wastewater Treatment Facilities.

§317.5. Sludge Processing.

§317.6. Disinfection.

§317.7. Safety.

§317.8. Design and Operation Features.

§317.9. Appendix A.

§317.10. Appendix B--Overland Flow Process.

§317.11. Appendix C--Hyacinth Basins.

§317.12. Appendix D.

§317.13. Appendix E--Separation Distances.

§317.15. Appendix G--General Guidelines for the Design of Constructed Wetlands Units for Use in Municipal Wastewater Treatment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 239-0177

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (commission) proposes amendments to §§331.2, 331.7, 331.17, 331.42, 331.45, 331.46, 331.62 - 331.66, and 331.121 and new §§331.201 - 331.206.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking supports the commission's role in promoting desalination projects and is intended to facilitate permitting of Class I wells to be used for disposal of nonhazardous desalination concentrate and other nonhazardous water treatment residuals from public water systems and to reduce operating costs for these wells. This project is in response to initiatives by the Governor's Office and the Texas Water Development Board to promote desalination technology in Texas and to address the need for public water supply systems to dispose of drinking water treatment residuals.

This rulemaking implements House Bill (HB) 2654, 80th Legislature, 2007 and amends technical standards to expand disposal options for the special case of nonhazardous brine from a desalination operation (desalination concentrate) and nonhazardous drinking water treatment residuals. HB 2654 allows the commission to issue a general permit to authorize the use of a Class I injection well to dispose of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. A single statewide general permit covering all qualifying Class I injection wells that meet the permit's performance standards for injection of nonhazardous desalination concentrate and other nonhazardous drinking water treatment residuals will expedite the processing of authorizations for wells used for these purposes. The general permit will require safeguards to protect groundwater and surface water.

The use of a general permit to authorize Class I wells for disposal of desalination concentrate and other water treatment residuals from public water systems will reduce commission staff time required to perform detailed administrative and technical reviews of individual permit applications. For projects that do not meet the criteria for the general permit, the commission will be able to conduct streamlined reviews of applications for Class I nonhazardous wells for the disposal of desalination concentrate and other water treatment residuals from public water systems. Under current rules, injection of nonhazardous desalination concentrate and other nonhazardous water treatment residuals from public water systems is limited to individually-permitted Class I wells, Class II wells dually permitted as Class I wells, or under special conditions, rule-authorized Class V wells. Other options for disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals include evaporation ponds and surface discharge under a Texas Pollutant Discharge Elimination System permit.

Entities disposing of desalination concentrate and other water treatment residuals from public water systems in Class I nonhazardous waste disposal wells and Class I/Class II dually permitted wells will be the primary beneficiaries of this proposed rulemaking. This rulemaking will benefit the public by facilitating the production of public water supplies via desalination. Public water systems that must treat water to meet standards for constituent levels and dispose of the residuals will also benefit. Residents and property owners adjacent to disposal sites may be affected by this rule. This rulemaking may require submittal of a Underground Injection Control (UIC) Program revision to the United States Environmental Protection Agency in order to explain new processes under the proposed rules and future general permit.

HB 2654 also authorizes the use of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without first obtaining a permit from the commission (consistent with federal regulations). Prior to this legislation, enhanced oil recovery wells needed permits from both the commission and the Railroad Commission of Texas (Class II wells).

In addition to implementing HB 2654, this rulemaking amends Chapter 331 to create a set of criteria closely analogous to federal Class I nonhazardous injection well regulations for the special case of wells injecting nonhazardous desalination concentrate and other nonhazardous water treatment residuals from public water systems. Currently in Texas the technical standards for Class I hazardous and nonhazardous wells are substantially the same; however, federal Class I standards for nonhazardous waste wells are less stringent. In conjunction with HB 2654, the revised technical standards will facilitate the use of injection wells for these purposes while meeting federal standards.

To implement HB 2654, this rulemaking amends §§331.2, 331.7 and 331.17 and adds new Subchapter L, General Permit Authorizing Use of a Class I Injection Well to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals. To create a set of criteria closely analogous to federal Class I nonhazardous injection well regulations for the special case of wells injecting nonhazardous desalination

concentrate and other nonhazardous water treatment residuals from public water systems, §§331.42, 331.45, 331.46, 331.62 - 331.66 and 331.121 are amended. To allow an injection well authorized by the Railroad Commission of Texas to use nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without a permit from the commission, §331.7 is amended. The proposed amendment to §331.7 also stipulates that, in this context, radioactive material is subject to the applicable requirements of 30 TAC Chapter 336.

Changes to 30 TAC Chapters 50, 55, and 305 to implement HB 2654 are also proposed in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §331.2, Definitions, to add the following eight definitions. These definitions are necessary to characterize new terminology used in HB 2654 that do not currently appear in connection with Class I wells in Chapter 331. Desalination concentrate, is added as new paragraph (30). Drinking water treatment residuals is added as new paragraph (35). Enhanced oil recovery project (EOR), is added as new paragraph (37). General permit, is added as new paragraph (44). Individual permit, is added as new paragraph (49). Notice of change (NOC), and Notice of intent (NOI) are added as new paragraphs (71) and (72), respectively. Public water system, is added as new paragraph (84). The commission is renumbering the definitions in §331.2 as a result of the added definitions. Current paragraph (34) is renumbered as paragraph (36); current paragraphs (35) - (40) are renumbered as paragraphs (38) - (43), respectively; current paragraphs (41) - (44) are renumbered as paragraphs (45) - (48), respectively; current paragraphs (45) - (65) are renumbered as paragraphs (50) - (70), respectively; current paragraphs (66) - (76) are renumbered as paragraphs (73) - (83), respectively; current paragraphs (77) - (104) are renumbered as paragraphs (85) - (112), respectively.

Section 331.7, Permit Required, is amended as follows: subsection (a) is amended to include subsections (e) and (f) as exceptions to the requirement that all injection wells and activities must be authorized by an individual permit. The word "permit" is changed to "individual permit" to clarify that §331.7(a) pertains to an individual permit versus the general permit. Subsection (d) is revised to exclude pre-injection units for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals from the option to be authorized by registration. HB 2654 does not explicitly mention pre-injection units, and the commission plans to address pre-injection units in the general permit. Consistent with federal requirements, no special authorization for pre-injection units associated with these wells will be required. Pre-injection units may also be authorized under an individual permit, such as a Class I UIC permit, or under 30 TAC Chapter 290. Chapter 290 addresses the construction of facilities associated with water treatment. Proposed subsection (e) is added to authorize the commission to issue a general permit for the use of a Class I injection well to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. If the commission determines that the general permit will not protect ground and surface fresh water from pollution, the commission may require that an injection well and the injection activities be regulated under an individual permit. Proposed subsection (f) is added to stipulate that an injection well authorized by the Railroad Commission of Texas to use nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes does not require a permit from the commission.

Section 331.17(a), Pre-injection Units Registration, is amended to exclude pre-injection units for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals from the option to be authorized by registration. HB 2654 does not explicitly mention pre-injection units, and the commission plans to address pre-injection units in the general permit. Consistent with federal requirements, no special authorization for pre-injection units will be required for units associated with these wells. This change is made in conjunction with the amendment of §331.7(d).

The proposed amendment to §331.42, Area of Review, substantively affects subsections (a) - (c). The purpose of these changes is to specify standards for the extent of the area of review that are substantially equivalent to federal standards for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

In §331.42(a), the contents of existing §331.42(b)(1) - (4) are incorporated as new paragraphs (1) and (3) - (5). This reformatting groups the area of review requirements for different types and classes of wells under existing §331.42(a). Existing §331.42(b) is relabeled as §331.42(a)(1) and amended to exclude wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals from the area of review requirement for other types of Class I wells. Proposed §331.42(a)(2) is added to specify that the area of review for wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals is a radius of 1/4 mile from the proposed or existing wellbore, or the area within the cone of influence, whichever is greater. This new paragraph further stipulates that the radius of an area of review determined by the mathematical model stated in §331.42(b) is permissible even if it is less than 1/4 mile. The contents of existing §331.42(b)(2) - (4) are incorporated under §331.42(a) as paragraphs (3) - (5). Existing subsection (c), which contains a mathematical equation, is relabeled as subsection (b), and editorial changes are made at two places in the equation to replace an erroneous paragraph symbol with the Greek letter pi (π). Existing subsection (d) is relabeled as subsection (c) and amended to exclude wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals from the requirement for a minimum radius of 2-1/2 miles for the area of review. Existing subsection (e) is relabeled as subsection (d).

The commission proposes to amend §331.45(1) to exclude wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals from certain standards for construction and completion of the well that exceed federal standards for Class I nonhazardous waste wells. New language has been added to §331.45(2) to stipulate standards substantially equivalent to federal standards for construction and completion of Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Paragraphs (2) and (3) have been renumbered as paragraphs (3) and (4).

Section 331.46, Closure Standards, is amended to add new subsection (a), stating which of current subsections (a) - (p) of §331.46 apply to Class I wells, salt cavern disposal wells, and Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment

residuals. The purpose of these changes is to specify closure standards that are substantially equivalent to federal standards for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (a) has been relabeled as subsection (b), and subsequent subsections (b) - (p) have been relabeled as subsections (c) - (q), respectively. In subsection (c), the hyphenated word "non-hazardous" is corrected to "nonhazardous."

The commission proposes to amend §331.62, Construction Standards, by adding proposed subsection (a) to state that those construction standards for Class I nonhazardous waste wells which exceed federal standards for Class I wells do not apply to Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Proposed subsection (b) is added to stipulate construction standards substantially equivalent to federal standards for Class I nonhazardous waste wells that are authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

Section 331.63, Operating Requirements, is amended to add proposed subsection (a), stating which of current subsections (a) - (l) of §331.63 apply to Class I wells in general and which apply to the special case of Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. The purpose of these changes is to specify operating requirements that are substantially equivalent to federal standards for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (a) has been relabeled as subsection (b), and subsequent subsections (b) - (l) have been relabeled as subsection (c) - (m), respectively. In subsection (j), the hyphenated word "non-hazardous" is corrected to "nonhazardous" consistent with editorial standards. Proposed subsection (n) is added to stipulate requirements consistent with federal standards for the fluid and pressure in the annulus between the tubing and long string casing.

Section 331.64, Monitoring and Testing Requirements, is amended to add proposed subsection (a) stating that current subsections (a) - (i) of §331.64 apply to all Class I wells except Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Proposed subsection (k) is added to specify monitoring and testing requirements that are substantially equivalent to federal standards for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (a) has been relabeled as subsection (b), and subsequent subsections (b) - (i) have been relabeled as subsections (c) - (j), respectively.

Subsection 331.65, Reporting Requirements, is amended to add proposed subsection (a), stating that current subsections (a) - (c) of §331.64 apply to all Class I wells except Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Proposed subsection (e) is added to specify reporting requirements that are substantially equivalent to federal standards for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (a) has been relabeled as subsection (b), and subsequent subsections (b) and (c) have been relabeled as subsections (c) and (d), respectively.

Section 331.66, Additional Requirements and Conditions, is amended to state that this section applies to all Class I wells except Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. The requirements in §331.66 exceed federal requirements for Class I nonhazardous waste wells and will not apply to Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

Section 331.121(a)(2), Class I Wells, is amended to state that §331.121(a)(2)(A) - (R) apply to all Class I wells except Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Proposed §331.121(a)(3) is added to stipulate the information, consistent with federal requirements for Class I nonhazardous waste wells, to be considered by the commission before issuing a Class I permit for a well authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (c) is amended to state that all paragraphs apply to all Class I wells except wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (c) is also amended to specify that, consistent with federal requirements for Class I nonhazardous waste wells, only §331.121(c)(1) applies to Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. This change eliminates more stringent siting criteria that are not consistent with federal requirements for nonhazardous waste wells.

Proposed §331.201 is titled, Purpose and Applicability. Subsection (a) authorizes the commission to issue a permit to dispose of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals in a Class I well if the facility meets statutory and regulatory requirements. Subsection (b) states that the commission may issue a general permit authorizing the use of a Class I well to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (c) stipulates that authorization for the use of an injection well under a general permit does not confer a vested right. Subsection (d) refers to the requirements of 30 TAC Chapter 336 for the use or disposal of radioactive material under new Subchapter L of Chapter 331.

Proposed §331.202 is titled, Public Notice, Public Meetings, and Public Comment. Subsection (a) states that the requirements of this section apply to processing a new general permit and amendment, renewal, revocation or cancellation of a general permit. Subsection (b) includes requirements for publishing notice of a draft general permit. Subsection (c) stipulates the contents of a public notice of a draft general permit. Subsection (d) includes requirements for public meetings for the draft general permit. Subsection (e) specifies requirements for the executive director's response to public comments on the general permit.

Proposed §331.203 is entitled, Authorizations and Notices of Intent. Subsection (a) requires submission of a Notice of Intent for a person to obtain authorization to use a Class I injection well to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Subsection (b) stipulates that the content of the Notice of Intent shall be specified in the general permit. Subsection (c) states requirements for denial of an authorization or Notice of Intent. Subsection (d) covers suspension of authorization and Notices of Intent under a general permit. The executive director is required to provide written notice to a permittee if he intends to suspend the permittee's authority to inject waste under the general permit. Subsection (e)

specifies use of a permittee's compliance history in denying or suspending a permittee's authority to inject waste under the general permit.

Proposed §331.204 is entitled, Permit Duration, Amendment and Renewal. Subsection (a) stipulates a ten-year term for the general permit. Subsection (b) specifies conditions for renewal of the general permit. Subsection (c) states that, upon issuance of a renewed or amended general permit, owners or operators covered under the general permit shall submit a Notice of Intent in accordance with the requirements of the new permit. Subsection (d) requires permittees authorized under the general permit to submit an application for an individual permit before the general permit expires if the commission has not proposed to renew the general permit at least 90 days before its expiration date. Subsection (e) states that, through renewal or amendment, the commission may add or delete requirements or limitations to the general permit. Existing permittees covered by the general permit are to be provided a reasonable time to make changes necessary to comply with substantive additional requirements. Subsection (f) states that the commission must find that the general permit is consistent with the goals and policies of the Texas Coastal Management Plan.

Proposed §331.205 is titled, Fees for Notice of Intent and Notice of Change. New subsections (a) and (b) specify that a person must submit a $100 fee along with each Notice of Intent or Notice of Change, respectively, for each disposal well.

Proposed §331.206, titled Annual Fee Assessments, stipulates that annual facility and waste management fees must be paid by a person authorized by the general permit.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The agency will use existing resources to develop rules and guidelines for a general permit to authorize the use of Class I injection wells for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

This rulemaking implements HB 2654, 80th Legislature, 2007 and aligns state standards for Class I wells disposing only of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals with federal Class I injection well standards for nonhazardous wells. HB 2654 allows the commission to issue a general permit to authorize the use of a Class I injection well for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals and authorizes the use of these wastes as injection fluids for enhanced recovery purposes without obtaining a permit from the commission. To implement the legislation and revise technical standards, the proposed rules amend existing sections of Chapter 331 and add new Subchapter L. In conjunction with this rulemaking, amendments are proposed for appropriate sections of Chapters 50, 55, and 305. This fiscal note addresses only the fiscal implication of proposed changes to Chapter 331, and the fiscal implications for needed amendments to other chapters are addressed in separate fiscal notes.

A single statewide general permit covering all qualifying Class I injection wells that meet the permit's performance standards for injection of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals will expedite the processing of authorizations for wells used for these purposes. The general permit will require safeguards to protect groundwater and surface water when constructing and operating a well of this type.

The proposed rules are not expected to have significant fiscal implications for local governments or state agencies. Local governments and state agencies are expected to dispose of desalination concentrate and drinking water treatment residual waste in the least costly manner, and other methods of waste disposal are available which may be more economical than injection into a well permitted under the proposed general permit. Staff currently knows of two local governments that have expressed interest in the proposed general permit, but the number of local governments that would actually apply for the proposed permit is not known.

If a local government or state agency decides to apply for authorization under the general permit to own or operate a Class I injection well, it could expect to pay the same permit fee ($100 per application), construction, testing, and maintenance costs as those paid by owners or operators of Class I wells permitted under an individual permit for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. These costs can vary widely depending on multiple market and environmental factors, but they may be as much as or more than $1 million per well.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the facilitation of projects for enhanced oil recovery and the supply of public drinking water by establishing a streamlined permit process that remains protective of human health and the environment for disposal of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals via Class I injection wells.

No significant fiscal implications are expected for businesses that supply public drinking water as a result of the proposed rules. Other disposal options for nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals will remain available in addition to Class I wells. Suppliers of public drinking water are expected to choose the most economically viable disposal methods for these wastes. The number of businesses or individuals that might actually apply for authorization under the general permit is not known.

If an entity that supplies public drinking water applies for authorization under a general permit for a Class I well for the disposal of nonhazardous desalination concentrate or nonhazardous drinking treatment water residuals, it could expect to pay the same permit fee ($100 per application), construction, testing, and maintenance costs as those paid by owners or operators of Class I wells permitted for this type of waste disposal. With the exception of the permit fee, these costs can vary widely depending on multiple market and environmental factors, but they may be as much as or more than $1 million per well.

Businesses that have enhanced oil recovery wells and wish to inject nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals for recovery purposes will not have to apply for a Class I permit under the proposed rules. Cost savings may result because these businesses will not have to pay a $100 application fee, a $50 notice fee, or an estimated

$30,000 consultant fee associated with a Class I permit application.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Typically, small or micro-businesses do not own or operate Class I injection wells, and staff does not expect these businesses to request authorization under the general permit to operate a well of this type. If a small business does request authorization under the general permit to own or operate this type of Class I injection well, it can expect to incur the same costs to construct, maintain, and permit the well that are paid by a large business.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required by state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not intended to reduce risks to human health from environmental exposure, nor does it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the proposed rulemaking is to implement HB 2654, passed during the 80th Legislature, 2007, and to revise technical standards for Class I nonhazardous wells injecting desalination concentrate and other water treatment residuals from public water systems so that the state's rules are no more stringent than federal Class I nonhazardous injection well regulations. The rulemaking substantially advances this purpose by: 1) amending §§331.2, 331.7, and 331.17 and adding new Subchapter L to provide for a new general permit authorizing the use of Class I injection wells to inject nonhazardous desalination concentrate or other nonhazardous drinking water treatment residuals, to implement HB 2654; 2) amending §§331.42, 331.45, 331.46, 331.62 - 331.66 and 331.121 to create a set of criteria no more stringent than the federal regulations regarding Class I nonhazardous injection wells; and 3) amending §331.7 to provide that a permit is not required from the commission for an injection well authorized by the Railroad Commission to use nonhazardous desalination concentrate or drinking water treatment residuals for enhanced recovery purposes.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking does not exceed any standard set by federal law but rather amends the rules so that they are no more stringent or restrictive than the federal regulations. The proposed rules do not exceed the requirements of state law under the TWC, Chapter 27. Further, the proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program. Finally, the rulemaking is not proposed solely under the general powers of the agency, but rather specifically under TWC, §27.023(m), which allows the commission to adopt rules to implement the general permit authorizing use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals and TWC, §27.109, which authorizes the commission to adopt rules to implement TWC, Chapter 27, as well as the other general powers of the agency.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKING IMPACT ASSESSMENT

The commission evaluated the proposed rules to Chapter 331 and performed a preliminary assessment of whether the amendments would constitute a taking under Texas Government Code, Chapter 2007. The primary purposes of the proposed rules are to implement HB 2654 and to revise the technical standards for Class I wells injecting nonhazardous desalination concentrate or drinking water treatment residuals to be no more stringent than the federal regulations. The proposed rules would substantially advance these purposes by amending various sections of Chapter 331 to conform technical standards for Class I wells injecting nonhazardous desalination concentrate or drinking water treatment residuals to the federal standards and by amending various sections of Chapter 331 and adding Subchapter L to implement the general permit provided by HB 2654.

Promulgation and enforcement of the proposed rules would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rule because the proposed rules neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rulemaking. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

The commission has no reasonable alternative to rule adoption that could accomplish the specific purpose of implementing HB 2654 and revising technical standards to conform to federal standards.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 8, 2008 at 10:00 a.m. in Building E Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-030-331-PR. The comment period closes April 14, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ms. Kathryn Hoffman, Industrial and Hazardous Waste Permits Section, (512) 239-6890.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§331.2, 331.7, 331.17

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendments implement TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) - (29) (No change.)

(30) Desalination concentrate--Same as desalination brine.

(31) [~~(30)~~] Desalination operation--A process which produces water of usable quality by desalination.

(32) [~~(31)~~] Disposal well--A well that is used for the disposal of waste into a subsurface stratum.

(33) [~~(32)~~] Disturbed salt zone--Zone of salt enveloping a salt cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt cavern, and is the result of mining activities during salt cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(34) [~~(33)~~] Drilling mud--A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(35) Drinking water treatment residuals--Materials generated, concentrated or produced as a result of treating water for human consumption.

(36) [~~(34)~~] Drywell--A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(37) Enhanced oil recovery project (EOR)--The use of any process for the displacement of oil from the reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process. This term does not include pressure maintenance or water disposal projects.

(38) [~~(35)~~] Excursion--The movement of mining solutions into a designated monitor well.

(39) [~~(36)~~] Existing injection well--A Class I well which was authorized by an approved state or United States Environmental Protection Agency-administered program before August 25, 1988, or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(40) [~~(37)~~] Fluid--Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(41) [~~(38)~~] Formation--A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not neces-

sarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(42) [~~(39)~~] Formation fluid--Fluid present in a formation under natural conditions.

(43) [~~(40)~~] Fresh water--Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this subchapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

(i) it is used as drinking water for human consumption; or

(ii) the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

(iii) it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L total dissolved solids can be put to a beneficial use.

(44) General permit--A permit issued under the provisions of this chapter authorizing the disposal of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals as provided by Texas Water Code, §27.023.

(45) [~~(41)~~] Groundwater--Water below the land surface in a zone of saturation.

(46) [~~(42)~~] Groundwater protection area--A geographic area (delineated by the state under Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(47) [~~(43)~~] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(48) [~~(44)~~] Improved sinkhole--A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(49) Individual permit--A permit, as defined in the Texas Water Code (TWC), §27.011 and §27.021, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 27, (other than TWC, §27.023).

(50) [~~(45)~~] Injection interval--That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(51) [~~(46)~~] Injection operations--The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(52) [~~(47)~~] Injection well--A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(53) [~~(48)~~] Injection zone--A formation, a group of formations, or part of a formation that receives fluid through a well.

(54) [~~(49)~~] In service--The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(55) [~~(50)~~] Intermediate casing--A string of casing with diameter intermediate between that of the surface casing and that of the smaller long-string or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long-string or production casing.

(56) [~~(51)~~] Large capacity cesspool--A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(57) [~~(52)~~] Large capacity septic system--A septic system that is designed for a flow of greater than 5,000 gallons per day.

(58) [~~(53)~~] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(59) [~~(54)~~] Liner--An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(60) [~~(55)~~] Long string casing or production casing--A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(61) [~~(56)~~] Lost circulation zone--A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(62) [~~(57)~~] Mine area--The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(63) [~~(58)~~] Mine plan--A map of adopted mine areas and an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(64) [~~(59)~~] Monitor well--Any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units.

(65) [~~(60)~~] Motor vehicle waste disposal well--A well used for the disposal of fluids from vehicular repair or maintenance activities including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(66) [~~(61)~~] New injection well--Any well, or group of wells, not an existing injection well.

(67) [~~(62)~~] New waste stream--A waste stream not permitted.

(68) [~~(63)~~] Non-commercial facility--A Class I permitted facility which operates only non-commercial wells.

(69) [~~(64)~~] Non-commercial underground injection control (UIC) Class I well facility--A UIC Class I permitted facility where only non-commercial wells are operated.

(70) [~~(65)~~] Non-commercial well--An underground injection control Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(71) Notice of change (NOC)--A written submittal to the executive director from a permittee authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the waste to be injected.

(72) Notice of intent (NOI)--A written submittal to the executive director requesting coverage under the terms of a general permit.

(73) [~~(66)~~] Off-site--Property which cannot be characterized as on-site.

(74) [~~(67)~~] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(75) [~~(68)~~] Out of service--The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(76) [~~(69)~~] Permit area--The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

(77) [~~(70)~~] Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(78) [~~(71)~~] Point of injection--For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(79) [~~(72)~~] Pollution--The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

(i) to humans, animal life, vegetation, or property; or

(ii) to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(80) [~~(73)~~] Pre-injection units--The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(81) [~~(74)~~] Production area--The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(82) [~~(75)~~] Production area authorization--A document, issued under the terms of an injection well permit, approving the initiation of mining activities in a specified production area within a permit area.

(83) [~~(76)~~] Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(84) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances as defined in §290.38(47) of this title (relating to Definitions).

(85) [~~(77)~~] Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2, and as amended.

(86) [~~(78)~~] Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(87) [~~(79)~~] Restored aquifer--An aquifer whose local groundwater quality has, by natural or artificial processes, returned to levels consistent with restoration table values or better as verified by an approved sampling program.

(88) [~~(80)~~] Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt stock, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(89) [~~(81)~~] Salt cavern confining zone--A zone between the salt cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt cavern or its disturbed salt zone.

(90) [~~(82)~~] Salt cavern injection interval--That part of a salt cavern injection zone consisting of the void space of the salt cavern into which waste is stored or disposed of, or which is capable of receiving waste for storage or disposal.

(91) [~~(83)~~] Salt cavern injection zone--The void space of a salt cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(92) [~~(84)~~] Salt cavern solid waste disposal well or salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the Texas Railroad Commission, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject hazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(93) [~~(85)~~] Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(94) [~~(86)~~] Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(95) [~~(87)~~] Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(96) [~~(88)~~] Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(97) [~~(89)~~] Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(98) [~~(90)~~] Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. This definition includes subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions).

(99) [~~(91)~~] Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(100) [~~(92)~~] Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(101) [~~(93)~~] Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(102) [~~(94)~~] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(103) [~~(95)~~] Underground injection--The subsurface emplacement of fluids through a well.

(104) [~~(96)~~] Underground injection control--The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(105) [~~(97)~~] Underground source of drinking water--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than l0,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(106) [~~(98)~~] Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(107) [~~(99)~~] Verifying analysis--A second sampling and analysis of control parameters for the purpose of confirming a routine sample analysis which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(108) [~~(100)~~] Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(109) [~~(101)~~] Well injection--The subsurface emplacement of fluids through a well.

(110) [~~(102)~~] Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(111) [~~(103)~~] Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(112) [~~(104)~~] Workover--An operation in which a downhole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

§331.7. Permit Required.

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule) and by subsections [~~subsection~~] (d) - (f) of this section, all injection wells and activities must be authorized by an individual permit.

(b) - (c) (No change.)

(d) Pre-injection units for Class I nonhazardous, noncommercial injection wells and Class V injection wells permitted for the disposal of nonhazardous waste must be either authorized by a permit issued by the commission or registered in accordance with §331.17 of this title (relating to Pre-Injection Units Registration). The option of registration provided by this subsection shall not apply to pre-injection units for Class I injection wells used for the disposal of byproduct material, as that term is defined in Chapter 336 of this title (relating to Radioactive Substance Rules). Pre-injection units for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals are not subject to authorization by registration but are subject to authorization by an individual permit or under the general permit issued under Subchapter L of this chapter (relating to General Permit Authorizing Use of a Class I Injection Well to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals).

(e) The commission may issue a general permit under Subchapter L of this chapter. The commission may determine that an injection well and the injection activities are more appropriately regulated under an individual permit than under a general permit based on findings that the general permit will not protect ground and surface fresh water from pollution due to site-specific conditions.

(f) Notwithstanding subsection (a) of this section, an injection well authorized by the Railroad Commission of Texas to use nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes does not require a permit from the commission. The use or disposal of radioactive material under this paragraph is subject to the applicable requirements of Chapter 336 of this title (relating to Radioactive Substance Rules).

§331.17. Pre-injection Units Registration.

(a) Pre-injection units not otherwise authorized under this chapter, except for those pre-injection units used in conjunction with

a Class I well authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, must be registered in accordance with the requirements of this section. Pre-injection units used in conjunction with a Class I well authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals are not subject to authorization by registration but are subject to authorization by an individual permit or under the general permit issued under Subchapter L of this chapter (relating to General Permit Authorizing Use of a Class I Injection Well to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals).

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. GENERAL STANDARDS AND METHODS

30 TAC §§331.42, 331.45, 331.46

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendments implement TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§331.42. Area of Review.

(a) The area of review is the area surrounding an injection well or a group of injection wells, for which the permit application must detail the information required in Subchapter G of this chapter [~~title~~] (relating to Consideration Prior to Permit Issuance).

(1) The area of review for Class I wells, except those wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, is an area determined by a radius of 2 1/2 miles from the proposed or existing wellbore, or the area within the cone of influence, whichever is greater.

(2) The area of review for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, is an area determined by a radius of 1/4 mile from the proposed or existing wellbore, or the area within the cone of influence, whichever is greater. Notwithstanding subsection (c) of this section, if the area of review is determined by a mathematical model pursuant to subsection (b) of this section, the permissible radius is the result of such calculation even if it is less than 1/4 mile.

(3) The area of review for salt cavern disposal wells and associated caverns, is the sum of the two following areas:

(A) an area determined by a radius of 2 1/2 miles from the proposed or existing wellbore; and

(B) the greatest horizontal plane cross-sectional area of the salt dome between land surface and a depth of 1,000 feet below the projected floor of the proposed or existing salt cavern.

(4) The area of review for Class III wells, is the project area plus a circumscribing area, a minimum of 1/4 mile, the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into a Underground Sources of Drinking Water.

(5) The area of review for Class V wells is an area determined by a radius of at least 1/4 mile from the proposed or existing wellbore.

[~~(b) The area of review is:~~]

[~~(1) for Class I wells, an area determined by a radius of 2 1/2 miles from the proposed or existing wellbore, or the area within the cone of influence, whichever is greater;~~]

[~~(2) for salt cavern disposal wells and associated caverns, the sum of the two following areas:~~]

[~~(A) an area determined by a radius of 2 1/2 miles from the proposed or existing wellbore; and~~]

[~~(B) the greatest horizontal plane cross-sectional area of the salt dome between land surface and a depth of 1,000 feet below the projected floor of the proposed or existing salt cavern;~~]

[~~(3) for Class III wells, the project area plus a circumscribing area, a minimum of 1/4 mile, the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into a USDW; or~~]

[~~(4) for Class V wells, an area determined by a radius of at least 1/4 mile from the proposed or existing wellbore.~~]

(b) [~~(c)~~] The computation of the cone of influence may be based upon the parameters listed in the figure in this subsection and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take:
Figure: 30 TAC §331.42(b)
[~~Figure 1: 30 TAC 331.42(c)~~]

(c) [~~(d)~~] After an appropriate review, the commission may modify the area of review. In no event shall the boundary of an area of review be less than 2 1/2 miles for Class I wells, except those wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, or 1/4 mile for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, or 1/4 mile from

any other injection well covered by the appropriate authorization. The following factors are to be included in the review:

(1) Chemistry of injection and formation fluids;

(2) Hydrogeology;

(3) Population and its dependence on ground water use; and

(4) Historical practices in the area.

(d) [~~(e)~~] The executive director may require an owner or operator of an existing injection well to submit any reasonably available information regarding the area of review, if the information would aid a review for the prevention or correction of freshwater pollution.

§331.45. Executive Director Approval of Construction and Completion.

The executive director may approve or disapprove the construction and completion for an injection well or project. In making a determination whether to grant approval, the following shall be reviewed for compliance with the standards of this chapter:

(1) for Class I wells, except for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, and [~~other than~~] salt cavern disposal wells and associated salt caverns:

(A) actual as-built drilling and completion data on the well;

(B) all logging and testing data on the well;

(C) a demonstration of mechanical integrity;

(D) anticipated maximum pressure and flow rate at which the permittee will operate;

(E) results of the injection zone and confining zone testing program as required in §331.62(7) of this title (relating to Construction Standards) and §331.65(a) of this title (relating to Reporting Requirements [~~Pre-operation Reports~~]);

(F) the actual injection procedure;

(G) the compatibility of injected wastes with fluids in the injection zone and minerals in both the injection zone and the confining zone and materials used to construct the well;

(H) the calculated area of review and cone of influence based on data obtained during logging and testing of the well and the formation, and where necessary, revisions to the information submitted under §331.121 of this title (relating to Class I Wells);

(I) the status of corrective action required for defective wells in the area of review;

(J) compliance with the casing and cementing performance standard in §331.62(5) of this title [~~(relating to Construction Standards)~~], and where necessary, changes to the permit to provide for additional testing and/or monitoring of the well to insure the continuous attainment of the performance standard; and

(K) compliance with the cementing requirements in §331.62(6) of this title.

(2) for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals:

(A) all available logging and testing program data on the well;

(B) a demonstration of mechanical integrity;

(C) the anticipated maximum pressure and flow rate at which the permittee will operate;

(D) the results of the formation testing program;

(E) the actual injection procedure;

(F) the compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and

(G) the status of corrective action on defective wells in the area of review.

(3) [~~(2)~~] for salt cavern disposal wells and associated salt caverns:

(A) actual as-built drilling and completion data on the well;

(B) all logging, coring, and testing program data on the well and salt pilot hole;

(C) a demonstration of mechanical integrity of the well;

(D) the anticipated maximum wellhead and casing seat pressures and flow rates at which the well will operate during cavern development and cavern waste filling;

(E) results of the salt cavern injection zone and salt cavern confining zone testing program as required in §331.163(e)(3) of this title (relating to Well Construction Standards [~~Salt Cavern Solid Waste Disposal Wells~~]);

(F) the injection and production procedures for cavern development and cavern waste filling;

(G) the compatibility of injected materials with the contents of the salt cavern injection zone and the salt cavern confining zone, and with the materials of well construction;

(H) land subsidence monitoring data and groundwater quality monitoring data, including determinations of baseline conditions for such monitoring throughout the area of review;

(I) the status of corrective action required for defective wells in the area of review;

(J) actual as-built specifications of the well's surface support and monitoring equipment; and

(K) conformity of the constructed well system with the plans and specifications of the permit application;

(4) [~~(3)~~] for Class III wells:

(A) logging and testing data on the well;

(B) a satisfactory demonstration of mechanical integrity for all new wells, excluding monitor wells;

(C) anticipated operating data;

(D) the results of the formation testing program;

(E) the injection procedures; and

(F) the status of corrective action required for defective wells in the area of review.

§331.46. Closure Standards.

(a) Applicability. Subsections (b) - (n) and (q) of this section apply to Class I wells except for salt cavern disposal wells and those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. For salt cavern disposal wells, only subsections (c) and (e) - (q) of this section

apply. For Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, only subsections (e) - (h) and (q) of this section apply.

(b) [~~(a)~~] For Class I wells, [~~other than salt cavern disposal wells,~~] prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the executive director. The executive director shall analyze the pressure decay and the transient pressure observations conducted pursuant to §331.64 of this title (relating to Monitoring and Testing Requirements [~~Class I Wells~~]) and determine whether the injection activity has conformed with predicted values.

(c) [~~(b)~~] For all Class I wells, [~~including salt cavern disposal wells,~~] prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

(1) pressure tests with liquid or gas;

(2) radioactive tracer surveys for wells other than salt cavern disposal wells;

(3) noise logs, temperature logs, pipe evaluation logs, cement bond logs, or oxygen activation logs; and

(4) any other test required by the executive director.

(d) [~~(c)~~] For Class I wells, [~~other than salt cavern disposal wells,~~] prior to well closure the well shall be flushed with a nonhazardous [~~non-hazardous~~] buffer fluid.

(e) [~~(d)~~] In closure of all Class I wells, [~~including salt cavern disposal wells,~~] Class III wells, and permitted Class V wells, a well shall be plugged in a manner which will not allow the movement of fluids through the well, out of the injection zone either into or between underground sources of drinking waters (USDWs) or to the land surface. Well plugs shall consist of cement or other materials approved in writing by the executive director, which provide protection equivalent to or greater than that provided by cement.

(f) [~~(e)~~] The permittee shall notify the executive director before commencing closure according to an approved plan. For Class I wells this notice shall be given at least 60 days before commencement. At the discretion of the executive director, a shorter notice period may be allowed. The executive director shall review any revised, updated, or additional closure plans.

(g) [~~(f)~~] Placement of the plugs in the wellbore shall be accomplished by an approved method that may include one of the following:

(1) the balance plug method;

(2) the dump bailer method;

(3) the two-plug method; or

(4) an alternate method, approved by the executive director, that will reliably provide a comparable level of protection.

(h) [~~(g)~~] Prior to closure, the well shall be in a state of static equilibrium with the mud or nonhazardous fluid weight equalized top to bottom, either by circulating the mud or fluid in the well at least once or by a comparable method prescribed by the executive director.

(i) [~~(h)~~] Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(j) [~~(i)~~] The closure plan shall, in the case of a Class III production zone which underlies or is in an exempted aquifer, also demonstrate that no movement of contaminants that will cause pollution from the production zone into a USDW or freshwater aquifer will occur. The commission shall prescribe aquifer cleanup and monitoring where deemed necessary and feasible to ensure that no migration of contaminants that will cause pollution from the production zone into a USDW or freshwater aquifer will occur.

(k) [~~(j)~~] The following shall be considered in determining the adequacy of a plugging and abandonment plan for Class I and III wells:

(1) the type and number of plugs to be used;

(2) the placement of each plug including the elevation of the top and bottom;

(3) the type, grade, and quantity of plugging material to be used;

(4) the method of placement of the plugs;

(5) the procedure used to plug and abandon the well;

(6) any newly constructed or discovered wells, or information, including existing well data, within the area of review;

(7) geologic or economic conditions;

(8) the amount, size, and location by depth of casings and any other materials left in the well;

(9) the method and location where casing is to be parted if applicable;

(10) the estimated cost of the plugging procedure; and

(11) such other factors that may affect the adequacy of the plan.

(l) [~~(k)~~] For Class I wells only, a monument or other permanent marker shall be placed at or attached to the plugged well before abandonment. The monument shall state the permit number, date of abandonment, and company name.

(m) [~~(l)~~] Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record, within 60 days after approval by the executive director of the closure operations, a notation on the deed to the facility property or on some other instrument which is normally examined during a title search that will, in perpetuity, provide any potential purchaser of the property the following information:

(1) the fact that land has been used to manage hazardous waste;

(2) the name of the state agency or local authority with which the plat was filed, as well as the Austin address of the Underground Injection Control (UIC) staff of the commission, to which it was submitted; and

(3) the type and volume of waste injected, the injection interval or intervals, and for salt cavern wells, the maximum cavern radius into which it was injected, and the period over which injection occurred.

(n) [~~(m)~~] Within 30 days after completion of closure, the permittee shall file with the executive director a closure report on forms provided by the commission. The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). This report shall consist of a statement that the well was closed in accordance with the closure plan previously submitted and approved by the executive director. Where the actual closure differed from the plan previously submitted, a written statement shall be submitted specifying the differences between the previous plan and the actual closure.

(o) [~~(n)~~] For salt cavern disposal wells, prior to sealing the cavern and plugging the well, the owner or operator shall complete any pre-closure monitoring of the cavern and its contents required by rule or permit.

(p) [~~(o)~~] For salt cavern disposal wells, the cavern shall be closed according to §331.170 of this title (relating to Cavern Closure).

(q) [~~(p)~~] The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the closure plan requirement is a condition of the permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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SUBCHAPTER D. STANDARDS FOR CLASS I WELLS OTHER THAN SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §§331.62 - 331.66

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendments implement TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§331.62. Construction Standards.

(a) All Class I wells shall be designed, constructed, and completed to prevent the movement of fluids that could result in the pollution of an underground source of drinking water (USDW). The following standards apply to all Class I wells except those wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

(1) Design criteria. Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The well shall be designed and constructed to prevent potential leaks from the well, to prevent the movement of fluids along the wellbore into or between USDWs, to prevent the movement of fluids along the wellbore out of the injection zone, to permit the use of appropriate testing devices and workover tools, and to permit continuous monitoring of injection tubing, long string casing, and annulus, as required by this chapter. All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, the American Society for Testing Materials, or comparable standards acceptable to the executive director.

(A) Casing design. Surface casing shall be set to a minimum subsurface depth, as determined by the executive director, which extends into the confining bed below the lowest formation containing a USDW or freshwater aquifer. At least one long string casing, using a sufficient number of centralizers, shall extend to the injection interval. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(i) depth of lowermost USDW or freshwater aquifer;

(ii) depth to the injection interval;

(iii) injection pressure, external pressure, internal pressure, and axial loading;

(iv) hole size;

(v) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(vi) the maximum burst and collapse pressures, and tensile stresses which may be experienced at any point along the length of the casings at any time during the construction, operation, and closure of the well;

(vii) corrosive effects of injected fluids, formation fluids, and temperatures;

(viii) lithology of injection and confining intervals;

(ix) presence of lost circulation zones or other subsurface conditions that could affect the casing and cementing program;

(x) types and grades of cement; and

(xi) quantity and chemical composition of the injected fluid.

(B) Tubing and packer design. All Class I injection wells shall inject fluids through tubing with a packer, set at a depth specified by the executive director. Fluid seal systems will not be approved by the commission. The annulus system shall be designed and constructed to prevent the leak of injection fluids into any unauthorized zones. In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) depth to the injection zone;

(ii) characteristics of injection fluid (chemical content, corrosiveness, temperature, and density);

(iii) injection pressure;

(iv) annular pressure;

(v) rate (intermittent or continuous), temperature, and volume of injected fluid;

(vi) size of casing; and

(vii) tensile, burst, and collapse strengths of the tubing.

(2) Plans and specifications. Except as specifically required in the terms of the disposal well permit, the drilling and completion of the well shall be done in accordance with the requirements of this chapter and all permit application plans and specifications.

(3) Changes to plans and specifications. Any proposed changes to the plans and specifications must be approved in writing by the executive director that said changes provide protection standards equivalent to or greater than the original design criteria.

(A) If during the drilling and/or completion of the well, the operator proposes to change the cementing of the surface casing, the executive director shall require a written description of the proposed change, including any additional data necessary to evaluate the request. The operator may not execute the change until the executive director gives written approval. The operator may change the setting depth of the surface casing to a depth greater than that specified in the permit, either during drilling and/or completion, without approval from the executive director. Approval for setting depths shallower than specified in the permit will not be authorized.

(B) If the operator proposes to change the injection interval to one not reviewed during the permit application process, the operator shall submit an application to amend the permit. The operator may not inject into any unauthorized zone.

(C) Any other changes, including but not limited to the number of casing strings, changes in the size or material of intermediate and production casings, changes in the completion of the well, changes in the exact setting of screens or injection intervals within the permitted injection zone, and changes in the type of cement used, or method of cementing shall be considered minor changes. If minor changes are requested, the executive director may give immediate oral and subsequent written approval or written approval for those changes. The operator is required to submit a detailed written description of all minor changes, along with the information required in §331.65 of this title (relating to Waste Disposal Operating [~~Reporting~~] Requirements), before approval for operation of the well may be granted.

(4) Drilling requirements.

(A) The well shall be drilled according to sound engineering practices to minimize problems which may jeopardize completion attempts, such as deviated holes, washouts and stuck pipe.

(B) As much as technically practicable and feasible, the hole should be drilled under laminar flow conditions, with appropriate fluid loss control, to minimize hole washouts.

(C) Immediately prior to running casing, the drilling fluid in the hole is to be circulated and conditioned to establish rheological properties commensurate with proper cementing practices.

(5) Construction performance standard. All Class I wells shall be cased and all casings shall be cemented to prevent the movement of fluids along the borehole into or between USDWs or freshwater aquifers, and to prevent movement of fluids along the borehole out of the injection zone.

(6) Cementing requirements, for all Class I wells constructed after the promulgation of this rule, including wells converting to Class I status.

(A) Cementing shall be by the pump and plug or other method approved by the executive director. Cementing may be accomplished by staging. Cement pumped shall be of a volume equivalent to at least 120% of the volume calculated necessary to fill the annular space between the hole and casing and between casing strings to the surface of the ground. The executive director may require more than 120% when the geology or other circumstances warrant it. A two-dimensional caliper shall be used to measure the hole diameter. If the two-dimensional caliper can not measure the diameter of the hole over an interval, then the minimum amount of cement needed for that interval shall be a volume calculated to be equivalent to or greater than 150% of the space between the casing and the maximum measurable diameter of the caliper.

(B) If lost circulation zones or other subsurface conditions are anticipated and/or encountered, which could result in less than 100% filling of the annular space between the casing and the borehole or the casings, the owner/operator shall implement the approved contingency plan submitted according to §331.121(a)(2)(O) of this title (relating to Class I Wells).

(7) Logs and tests.

(A) Integrity testing. Appropriate logs and other tests shall be conducted during the drilling and construction of Class I wells. All logs and tests shall be interpreted by the service company which processed the logs or conducted the test; or by other qualified persons. A minimum of the following logs and tests shall be conducted:

(i) deviation checks on all holes, conducted at sufficiently frequent intervals to assure that avenues for fluid migration in the form of diverging holes are not created during drilling;

(ii) for surface casing;

(I) spontaneous potential, resistivity, natural gamma, and caliper logs before the casing is installed;

(II) cement bond with variable density log, and temperature logs after casing is set and cemented; and

(III) any other test required by the executive director;

(IV) the executive director may allow the use of an alternate to subclauses (I) and (II) of this clause when an alternative will provide equivalent or better information; and

(iii) for intermediate and long string casing:

(I) spontaneous potential, resistivity, natural gamma, compensated density and/or neutron porosity, dipmeter/fracture finder, and caliper logs, before the casing is installed;

(II) a cement bond with variable density log, casing inspection, and temperature logs after casing is set and cemented, and an inclination survey; and

(III) any other test required by the executive director; and

(iv) a mechanical integrity test consisting of:

(I) a pressure test with liquid or gas;

(II) a radioactive tracer survey;

(III) a temperature or noise log;

(IV) a casing inspection log, if required by the executive director; and

(V) any other test required by the executive director.

(B) Pressure tests. Surface casing shall be pressure tested to 1,000 pounds per square inch, gauge (psig) for at least 30 minutes, and long string casing shall be tested to 1,500 psig for at least 30 minutes, unless otherwise specified by the executive director.

(C) Core samples. Full-hole cores shall be taken from selected intervals of the injection zone and lowermost overlying confining zone; or, if full-hole coring is not feasible or adequate core recovery is not achieved, sidewall cores shall be taken at sufficient intervals to yield representative data for selected parts of the injection zone and lowermost overlying confining zone. Core analysis shall include a determination of permeability, porosity, bulk density, and other necessary tests.

(8) Injectivity tests. After completion of the well, injectivity tests shall be performed to determine the well capacity and reservoir characteristics. Surveys shall be performed to establish preferred injection intervals. Prior to performing injectivity tests, the bottom hole pressure, bottom hole temperature, and static fluid level shall be determined, and a representative sample of formation fluid shall be obtained for chemical analysis. Information concerning the fluid pressure, temperature, fracture pressure and other physical and chemical characteristics of the injection and confining zones shall be determined or calculated.

(9) Construction and workover supervision. All phases of well construction and all phases of any well workover shall be supervised by qualified individuals acting under the responsible charge of a licensed professional engineer or licensed professional geoscientist, as appropriate, with current registration under the Texas Engineering Practice Act or Texas Geoscience Practice Act, who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(10) The executive director shall have the opportunity to witness all cementing of casing strings, logging and testing. The owner or operator shall submit a schedule of such activities to the executive director at least 30 days prior to commencing drilling of the well. The executive director shall be given at least 24 hour notice before each activity in order that a representative of the executive director may be present.

(b) Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals shall be constructed in compliance with the following standards:

(1) Wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(2) Wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(A) Depth to the injection zone;

(B) Injection pressure, external pressure, internal pressure, and axial loading;

(C) Hole size;

(D) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(E) Corrosiveness of injected fluid, formation fluids, and temperatures;

(F) Lithology of injection and confining intervals; and

(G) Type or grade of cement.

(3) Injection wells, except those municipal wells injecting non-corrosive wastes or those using an alternative as provided by subparagraph (A) of this paragraph shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.

(A) The use of other alternatives to a packer may be allowed with the written approval of the executive director. To obtain approval, the operator shall submit a written request to the executive director, which shall set forth the proposed alternative and all technical data supporting its use. The executive director shall approve the request if the alternative method will reliably provide a comparable level of protection to underground sources of drinking water. The executive director may approve an alternative method solely for an individual well or for general use.

(B) In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate, temperature and volume of injected fluid; and

(vi) Size of casing.

(4) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the executive director. At a minimum, such logs and tests shall include:

(A) Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling; and

(B) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information, that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:

(i) For surface casing intended to protect underground sources of drinking water:

(I) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(II) A cement bond, temperature, or density log after the casing is set and cemented.

(ii) For intermediate and long strings of casing intended to facilitate injection:

(I) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(II) Fracture finder logs; and

(III) A cement bond, temperature, or density log after the casing is set and cemented.

(5) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals:

(A) Fluid pressure;

(B) Temperature;

(C) Fracture pressure;

(D) Other physical and chemical characteristics of the injection matrix; and

(E) Physical and chemical characteristics of the formation fluids.

§331.63. Operating Requirements.

(a) Applicability. Subsections (b) - (m) of this section apply to Class I wells except for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. For Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals only subsections (b) - (d) and (n) of this section apply.

(b) [~~(a)~~] All Class I wells shall be operated to prevent the movement of fluids that could result in the pollution of an underground source of drinking water (USDW) and to prevent leaks from the well into unauthorized zones.

(c) [~~(b)~~] Except during well stimulation, injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate new fractures or propagate existing fractures in the confining zone, or cause movement of fluid out of the injection zone that may pollute USDWs or surface water.

(d) [~~(c)~~] Injection between the outermost casing protecting USDWs and fresh or surface water and the wellbore is prohibited.

(e) [~~(d)~~] The annulus between the tubing and long string casing shall be filled with a non-corrosive or corrosion-inhibiting fluid approved by the commission. The annulus pressure shall be at least 100 psi greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones and to detect well malfunctions, unless the executive director determines that such a requirement might harm the integrity of the well.

(f) [~~(e)~~] Monthly average and maximum instantaneous rates of injection, and annual and monthly volumes of injected fluids shall not exceed limits specified by the commission.

(g) [~~(f)~~] All gauges, pressure sensing, and recording devices shall be tested and calibrated quarterly.

(h) [~~(g)~~] Any chemical or physical characteristic of the injected fluids shall be maintained within specified permit limits for the protection of the injection well, associated facilities, and injection zone and to ensure proper operation of the facility.

(i) [~~(h)~~] The permittee shall notify the executive director before commencing any workover operation. The notification shall be in writing and shall include plans for the proposed work. Approval by the executive director shall be obtained before the permittee may begin the workover. The executive director may grant an exception to the prior written notification and permission requirements when immediate action is required to comply with subsection (b) [~~(a)~~] of this section.

(j) [~~(i)~~] Pressure control equipment shall be installed and maintained during workovers which involve the removal of tubing.

(k) [~~(j)~~] For workovers or testing operations on hazardous waste disposal wells, all hazardous fluids shall be flushed from the wellbore with a nonhazardous [~~non-hazardous~~] fluid before conducting any portion of the operations which would result in the exposure of the hazardous wastes to the environment or the public.

(l) [~~(k)~~] The owner or operator shall maintain mechanical integrity of the injection well at all times.

(m) [~~(l)~~] The owner or operator of an injection well that has ceased operations for more than two years and is subject to §305.154(a)(7) of this title (relating to Standards) shall notify the executive director in writing 30 days prior to resuming operation of the well.

(n) For Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, unless an alternative to a packer has been approved under §331.62(b)(3)(A) of this title (relating to Construction Standards), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the executive director and a pressure, also approved by the executive director, shall be maintained on the annulus.

§331.64. Monitoring and Testing Requirements.

(a) Applicability. Subsections (b) - (j) of this section apply to all Class I wells except for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

(b) [~~(a)~~] Injection fluids shall be sampled and analyzed with a frequency sufficient to yield representative data of their characteristics.

(1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(A) the parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(B) the test methods that will be used to test for these parameters; and

(C) the sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the executive director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(c) [~~(b)~~] Pressure gauges shall be installed and maintained, at the wellhead, in proper operating conditions at all times on the injection tubing and on the annulus between the tubing and long-string casing, and/or annulus between the tubing and liner.

(d) [~~(c)~~] Continuous recording devices shall be installed, used, and maintained in proper operating condition at all times to record injection tubing pressures, injection flow rates, injection fluid temperatures, injection volumes, tubing-long string casing annulus pressure and volume, and any other data specified by the permit. The instruments shall be housed in weatherproof enclosures. The owner or operator shall also install and use:

(1) automatic alarm and automatic shutoff systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the executive director exceed a range and/or gradient specified in the permit; or

(2) automatic alarms designed to sound when the pressures and flow rates or other parameters approved by the executive director exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on location and able to immediately respond to alarms at all times when the well is operating.

(3) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate as expeditiously as possible the cause of the alarm or shutoff. If, upon investigation, the well appears to be lacking mechanical integrity, or if monitoring otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(A) cease injection of waste fluids unless authorized by the executive director to continue or resume injection;

(B) take all necessary steps to determine the presence or absence of a leak; and

(C) notify the executive director within 24 hours after the alarm or shutdown.

(4) If the loss of mechanical integrity is discovered by monitoring or during periodic mechanical integrity testing, the owner or operator shall:

(A) immediately cease injection of waste fluids;

(B) take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(C) notify the executive director within 24 hours after the loss of mechanical integrity is discovered;

(D) notify the executive director when injection can be expected to resume; and

(E) restore and demonstrate mechanical integrity to the satisfaction of the executive director prior to resuming injection of waste fluids.

(5) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(A) the owner or operator shall immediately cease injection of waste fluids; and

(i) notify the executive director within 24 hours of obtaining such evidence;

(ii) take all necessary steps to identify and characterize the extent of any release;

(iii) propose a remediation plan for executive director review and approval;

(iv) comply with any remediation plan specified by the executive director;

(v) implement any remediation plan approved by the executive director; and

(vi) where such release is into a USDW or freshwater aquifer currently serving as a water supply, within 24 hours, notify the local health authority, place a notice in a newspaper of general circulation, and send notification by mail to adjacent landowners;

(B) the executive director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs or freshwater aquifers.

(e) [~~(d)~~] Mechanical integrity testing.

(1) The integrity of the long string casing, injection tube, and annular seal shall be tested annually by means of an approved pressure test with a liquid or gas and whenever there has been a well workover. The integrity of the bottom-hole cement shall be tested annually by means of an approved radioactive tracer survey. A radioactive tracer survey may be required after workovers that have the potential to damage the cement within the injection zone.

(2) A temperature log, noise log, oxygen activation log, or other approved log shall be required by the executive director at least once every five years to test for fluid movement along the borehole.

(3) A casing inspection, casing evaluation, or other approved log shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the executive director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years. The executive director may require that a casing inspection log be run every five years, if there is sufficient reason to believe the integrity of the long string casing of the well may be adversely affected by naturally occurring or man-made events.

(4) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraph (1) of this subsection with the written approval of the administrator of the United States Environmental Protection Agency (EPA) or his authorized representative. To obtain approval, the executive director shall submit a written request to the EPA administrator, which shall set forth the proposed test and all technical data supporting its use. The EPA administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the EPA administrator shall be published in the *Federal Register* and may be used unless its use is restricted at the time of approval by the EPA administrator.

(f) [~~(e)~~] Any wells within the area of review selected for the observation of water quality, formation pressure, or any other parameter, shall be monitored at a frequency sufficient to protect underground sources of drinking water (USDWs) and fresh or surface water.

(g) [~~(f)~~] Corrosion monitoring.

(1) Corrosion monitoring of well materials shall be conducted quarterly. Test materials shall be the same as those used in the injection tubing, packer, and long string casing, and shall be continuously exposed to the waste fluids with the exception of when the well is taken out of service. The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and to submit to the executive director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if

contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under §331.62(1) of this title (relating to Construction Standards [~~Design Criteria~~]). Testing shall be by:

(A) placing coupons of the well construction materials in contact with the waste stream; or

(B) routing the waste stream through a loop constructed with the material used in the well; or

(C) using an alternative method approved by the executive director.

(2) The test shall use materials identical to those used in the construction of the well, and those materials must be continuously exposed to the operating pressures and temperatures (measured at the wellhead) and flow rates of the injection operation; and

(3) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in §331.62(1) of this title [~~(relating to Construction Standards)~~].

(4) Corrosion monitoring may be waived by the executive director if the injection well owner or operator satisfactorily demonstrates, before authorization to conduct injection operations, that the waste streams will not be corrosive to the well materials with which the waste is expected to come into contact throughout the life of the well. The demonstration shall include a description of the methodology used to make that determination.

(h) [~~(g)~~] Ambient monitoring.

(1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect fluid movement, the executive director shall require the owner or operator to develop a monitoring program. When prescribing a monitoring system, the executive director may also require:

(A) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When a monitor well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the executive director;

(B) the use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the executive director, or to provide other site specific data;

(C) periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(D) periodic monitoring of the ground water quality in the lowermost USDW; and

(E) any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

(2) The pressure buildup in the injection zone shall be monitored annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(i) [~~(h)~~] Any other monitoring and testing requirements which the executive director determines to be necessary including, but not limited to, monitoring for seismic activity.

(j) [~~(i)~~] The owner or operator shall submit information demonstrating to the satisfaction of the executive director that the waste stream and its anticipated reaction products will not alter the permeability, thickness, or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in §331.121(c) of this title (relating to Class I Wells).

(k) Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals shall comply with the following monitoring and testing requirements:

(1) Monitoring requirements. Monitoring requirements shall, at a minimum, include:

(A) The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

(B) Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

(C) Installation and use of monitoring wells within the area of review if required by the executive director, to monitor any migration of fluids into and pressure in the underground sources of drinking water. The type, number and location of the wells, the parameters to be measured, and the frequency of monitoring must be approved by the executive director;

(D) A demonstration of mechanical integrity pursuant to paragraph (4) of this subsection at least once every five years during the life of the well; and

(E) The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the underground sources of drinking water, the parameters to be measured and the frequency of monitoring.

(2) When the executive director determines that an injection well lacks mechanical integrity pursuant to paragraph (4) of this subsection, the executive director shall give written notice of his determination to the owner or operator. Unless the executive director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the executive director's determination. The executive director may allow plugging of the well in accordance with the requirements of §331.46 of this title (relating to Closure Standards) or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the executive director that the owner or operator has demonstrated mechanical integrity under paragraph (4) of this subsection.

(3) The executive director may allow the owner or operator of a well which lacks mechanical integrity under paragraph (4) of this subsection to continue or resume injection if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

(4) Mechanical Integrity Testing. An injection well has mechanical integrity if:

(A) There is no significant leak in the casing, tubing or packer; and

(B) There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(5) One of the following methods shall be used to evaluate the absence of significant leaks under paragraph (4)(A) of this subsection:

(A) Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the executive director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface; or

(B) Pressure test with liquid or gas.

(6) The results of a temperature or noise log must be used to determine the absence of significant fluid movement under paragraph (4)(B) of this subsection.

(7) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraph (5)(A) and (B) of this subsection with the written approval of the executive director. To obtain approval, the permittee shall submit a written request to the executive director, which shall set forth the proposed test and all technical data supporting its use. The executive director shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed.

(8) In conducting and evaluating the tests enumerated in this section or others to be allowed by the executive director, the owner or operator and the executive director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the executive director, he shall include a description of the test(s) and the method(s) used. In making his evaluation, the executive director shall review monitoring and other test data submitted since the previous evaluation.

(9) The executive director may require additional or alternative tests if the results presented by the owner or operator under §331.64(k)(5) of this title (relating to Monitoring and Testing Requirements) are not satisfactory to the executive director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

(10) Ambient monitoring.

(A) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the executive director shall require the owner or operator to develop a monitoring program. At a minimum, the executive director shall require monitoring of the pressure buildup in the injection zone annually, including a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(B) When prescribing a monitoring system the executive director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the executive director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the executive director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

§331.65. Reporting Requirements.

(a) Applicability. Subsections (b) - (d) of this section apply to all Class I wells except for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

(b) [~~(a)~~] Pre-operation reports. For new wells, including wells converting to Class I status, the requirements are as follows.

(1) Completion report. Within 90 days after the completion or conversion of the well, the permittee shall submit a Completion Report to the executive director. The report must include a surveyor's plat showing the exact location and giving the latitude and longitude of the well. The report must also include a certification that a notation on the deed to the facility property or on some other instrument which is normally examined during title search has been made stating the surveyed location of the well, the well permit number, and its permitted waste streams. The permittee shall also include in the report the following, prepared and sealed by a licensed professional engineer or licensed professional geoscientist with current registration under the Texas Engineering Practice Act or Texas Geoscience Practice Act:

(A) actual as-built drilling and completion data on the well;

(B) all logging and testing data on the well;

(C) a demonstration of mechanical integrity;

(D) anticipated maximum pressure and flow rate at which the permittee will operate;

(E) results of the injection zone and confining zone testing program as required in §331.62 of this title (relating to Construction Standards) and this subsection;

(F) adjusted formation pressure increase calculations, fluid front calculations and updated cross- sections of the confining and injection zones, based on the data obtained during construction and testing;

(G) the actual injection procedure;

(H) the compatibility of injected wastes with fluids in the injection zone and minerals in both the injection zone and the confining zone and materials used to construct the well;

(I) the calculated area of review and cone of influence based on data obtained during logging and testing of the well and the formation, and where necessary, revisions to the information submitted under §331.121 of this title (relating to Class I Wells);

(J) the status of corrective action required for defective wells in the area of review;

(K) a Well Data Report on forms provided by the executive director;

(L) compliance with the casing and cementing performance standard in §331.62(5) of this title; and

(M) compliance with the cementing requirements in §331.62(6) of this title.

(2) Local authorities. The permittee shall provide written notice to the executive director, in a manner specified by the executive director, that a copy of the permit has been properly filed with the health and pollution control authorities of the county, city, and town where the well is located.

(3) Start-up date and time. The permittee shall notify the executive director in writing of the anticipated well start-up date. Compliance with all pre-operation terms of the permit must occur prior to beginning injection operations. The permittee shall notify the executive director at least 24 hours prior to beginning drilling operations.

(4) Approval of construction and completion. Prior to beginning operations, the permittee must obtain written approval from the executive director, according to §331.45 of this title (relating to Executive Director Approval of Construction and Completion).

(c) [~~(b)~~] Operating reports.

(1) Injection operation quarterly report. For non-commercial facilities only, within 20 days after the last day of the months of March, June, September, and December, the permittee shall submit to the executive director a quarterly report of injection operation on forms supplied by the executive director. These forms will comply with the reporting requirements of 40 Code of Federal Regulations (CFR) §146.69(a). The executive director may require more frequent reporting.

(2) Injection operation monthly report. Commercial facilities shall meet the following requirements.

(A) The permittee shall submit within 30 days after the last day of each month a report to the commission including the following information for wastes received and injected during the month:

(i) names and locations of the companies and plants generating the wastes;

(ii) chemical and physical characteristics and volume of waste received from each company including pH;

(iii) names of companies transporting the wastes; and

(iv) a log of injection operations for each injection episode including but not limited to time of injection, injection rate, injection pressures, injection fluid volume, injection fluid pH, and injection fluid density.

(B) The permittee shall submit to the commission within 20 days of the last day of each month a report of injection operations on forms provided by the commission. These forms shall comply with the reporting requirements of 40 CFR §146.69(a). The executive director may require more frequent reporting.

(3) Injection zone annual report. For all facilities, the permittee shall submit annually with the December report of injection operation an updated graphic or other acceptable report of the pressure effects of the well upon its injection zone as required by §331.64(h) of this title (relating to Monitoring and Testing Requirements). To the extent this information is reasonably available, the report must also include:

(A) locations of newly constructed or newly discovered wells that penetrate the confining and/or injection zone within the area of review if those wells were not included in the technical report accompanying the permit application or in later reports;

(B) a tabulation of data as required by §331.121(a)(2)(B) [~~§331.121(2)(B)~~] of this title for wells within the area of review that penetrate the injection zone or confining zone;

(C) the condition of the wells identified in subparagraph (A) of this paragraph and their effect on the injection activities;

(D) the protocol followed to identify, locate, and ascertain the condition of the wells identified in subparagraph (A) of this paragraph;

(E) a corrective action plan for wells not adequately constructed, completed, or plugged; and

(F) for non-commercial facilities only, a current injection fluid analysis.

(4) Mechanical integrity and other reports. The permittee shall submit within 30 days after test completion, a report including both data and interpretation on the results of:

(A) periodic tests of mechanical integrity; and

(B) any other test of the injection well or injection zone if required by the executive director.

(5) Emergency report of leak or other failure. The permittee shall notify the Underground Injection Control (UIC) Unit of the Austin office of the commission within 24 hours of any significant change in monitoring parameters or of any other observations which could reasonably be attributed to a leak or other failure of the well equipment or injection zone integrity.

(d) [~~(c)~~] Workover reports. Within 30 days after the completion of the workover, a report shall be filed with the executive director including the reason for well workover and the details of all work performed.

(e) Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals shall comply with the following reporting requirements:

(1) Completion Reports. A new injection well may not commence injection until construction is complete, and

(A) The permittee has submitted notice of completion of construction to the executive director; and

(B) The executive director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(C) The permittee has not received notice from the executive director of his intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in paragraph (1)(A) of this subsection, in which case prior inspection or review is waived and the permittee may commence injection. The executive director shall include in his notice a reasonable time period in which he shall inspect the well.

(2) Operating Reports. The owner or operator shall submit reports to the executive director as follows:

(A) Quarterly reports on:

(i) The physical, chemical, and other relevant characteristics of the injection fluids;

(ii) Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;

(iii) The results from ground-water monitoring wells prescribed in paragraph §331.64(k)(10) of this title (relating to Monitoring and Testing Requirements);

(iv) The results of any test of the injection well conducted by the owner or operator during the reported quarter if required by the executive director; and

(v) Any well work over performed during the reported quarter.

(B) Annual Reports. An annual report to the executive director summarizing the results of monitoring required under §331.64(k)(1)(B) of this title. This summary shall include monthly

records of injected fluids and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.

§331.66. Additional Requirements and Conditions.

(a) This section applies to all Class I wells except for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

(b) [~~(a)~~] A permit for a Class I well shall include expressly or by reference the following conditions.

(1) A sign shall be posted at the well site which shall show the name of the company, company well number, and commission permit number. The sign and identification shall be in the English language, clearly legible and shall be in numbers and letters at least one inch high.

(2) An all-weather road shall be installed and maintained to allow access to the injection well and related facilities.

(3) The wellhead and associated facilities shall be painted, if appropriate, and maintained in good working order without leaks.

(4) The commission may prescribe additional requirements for Class I wells to protect USDWs, and fresh or surface water from pollution.

(c) [~~(b)~~] Permit requirements for owners or operators of disposal wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) conditions limiting the temperature, pH, or acidity of the injected wastes; and

(2) procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER G. CONSIDERATION PRIOR TO PERMIT ISSUANCE

30 TAC §331.121

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§331.121. Class I Wells.

(a) The commission shall consider the following before issuing a Class I Injection Well Permit:

(1) all information in the completed application for permit;

(2) all information in the Technical Report submitted with the application for permit in accordance with §305.45(a)(8) of this title (relating to Contents of Application for Permit). [~~including but not limited to:~~] Subparagraphs (A) - (R) of this paragraph apply to all Class I wells except those Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Information to be considered includes, but is not limited to:

(A) - (R) (No change.)

(3) This paragraph applies to those Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Information to be considered includes, but is not limited to:

(A) a map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(B) a tabulation of data on all wells within the area of review that penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the executive director may require;

(C) a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary;

(D) maps and cross sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(E) maps and cross sections detailing the geologic structure of the local area;

(F) generalized maps and cross sections illustrating the regional geologic setting;

(G) proposed operating data:

(i) average and maximum daily rate and volume of the fluid to be injected;

(ii) average and maximum injection pressure; and

(iii) source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

(H) proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

(I) proposed stimulation program;

(J) proposed injection procedure;

(K) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(L) contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any underground source of drinking water;

(M) plans (including maps) for meeting the monitoring requirements in §331.64 of this title (relating to Monitoring and Testing Requirements);

(N) for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under §331.45(2)(G) of this title (relating to Executive Director Approval of Construction and Completion); and

(O) construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and

(4) [~~(3)~~] whether the applicant will assure, in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells), the resources necessary to close, plug, abandon, and if applicable, provide post-closure care for the well and/or waste disposal cavern as required;

(5) [~~(4)~~] the closure plan, corrective action plan, and post-closure plan submitted in the technical report accompanying the permit application; except that a post-closure plan is not required for those Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals; and

(6) [~~(5)~~] any additional information required by the executive director for the evaluation of the proposed injection well.

(b) In determining whether the use or installation of an injection well is in the public interest under Texas Water Code, §27.051(a)(1), the commission shall also consider:

(1) the compliance history of the in accordance with Texas Water Code, §27.051(e) and §281.21(d) of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance History [~~Summary~~]);

(2) - (4) (No change.)

(c) The commission shall consider the following minimum criteria for siting before issuing a Class I injection well permit for all Class I wells except those Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. For Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, only paragraph (1) of this subsection applies.

(1) - (4) (No change.)

(d) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER L. GENERAL PERMIT AUTHORIZING USE OF A CLASS I INJECTION WELL TO INJECT NONHAZARDOUS DESALINATION CONCENTRATE OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS

30 TAC §§331.201 - 331.206

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed new sections implement TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§331.201. Purpose and Applicability.

(a) The commission may issue a permit to dispose of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals in a Class I injection well if the facility meets all the statutory and regulatory requirements for the issuance of a permit for a Class I injection well.

(b) The commission may issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals if the commission determines that the injection well and injection activities are more appropriately regulated under a general permit than under an individual permit based on findings that:

(1) the general permit has been drafted to ensure that it can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit; and

(2) the general permit will contain proper safeguards to protect ground and surface fresh water from pollution.

(c) Authorization for the use of an injection well under a general permit does not confer a vested right.

(d) The use or disposal of radioactive material under this subchapter is subject to the applicable requirements of Chapter 336 of this title (relating to Radioactive Substance Rules).

§331.202. Public Notice, Public Meetings, and Public Comment.

(a) Applicability. The requirements of subsections (b) - (e) of this section apply to processing a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(b) Notice of a draft general permit shall be published as follows:

(1) Notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation; and

(2) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.

(c) The contents of a public notice of a draft general permit shall:

(1) include the applicable information described in §39.11 of this title (relating to Text of Public Notice);

(2) include an invitation for written comments by the public to the commission regarding the proposed draft general permit; and

(3) specify a comment period of at least 30 days.

(d) Requirements relating to public meetings are as follows:

(1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.

(2) Notice of a public meeting shall be by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

(3) Notice of a public meeting shall be mailed to the following:

(A) the county judge of the county or counties in which permittees under the general permit could be located;

(B) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting; and

(C) any other person the executive director or chief clerk may elect to include.

(4) The contents of a notice of a public meeting shall include the applicable information described in §39.11 of this title. Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(5) The public comment period shall automatically be extended to the close of any public meeting held by the agency on the proposed general permit.

(e) If the agency receives public comment during the comment period relating to issuance of a general permit, the executive director shall respond in writing to these comments, and this response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The response shall address all written comments received during the comment period and oral or written comments received during any public meeting held by the agency. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(1) The commission shall issue its written response to comments on the general permit at the same time the commission issues or denies the general permit.

(2) A copy of any issued general permit and response to comments shall be made available to the public for inspection at the agency's Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments shall be mailed to each person who made a comment during the comment period.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments shall be published in the *Texas Register*.

§331.203. Authorizations and Notices of Intent.

(a) A person may obtain authorization to use a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals under a general permit by complying with the general permit's conditions. A person shall submit a Notice of Intent to the executive director in a form or format that is specified in the general permit or otherwise set out in commission rules.

(b) The general permit shall describe the content of the Notice of Intent. A Notice of Intent shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(c) The following requirements apply to denial of an authorization or notice of intent.

(1) The executive director shall provide written notice to a facility if the executive director denies the facility's Notice of Intent or authorization to inject waste under a general permit, including, at a minimum, a brief statement of the basis for this decision.

(2) The executive director shall deny authorization to inject waste under an existing general permit for the following reasons:

(A) the quantity of waste to be injected, the type of waste, the type of operation, the injection well design, or the injection well construction does not comply with the general permit;

(B) the person or facility:

(i) has failed to pay any portion of a delinquent fee or charge assessed by the executive director;

(ii) is not in compliance with all requirements, conditions, and time frames specified in an unexpired commission final enforcement order relating to the activity regulated by the general permit; or

(iii) is subject to an unexpired enforcement order that requires the facility to comply with operating conditions different from or additional to the requirements of the general permit.

(3) The executive director may deny authorization to inject or operate an injection well under an existing general permit for reasons including, but not limited to, the following:

(A) the owner and/or the operator of the facility has not filed a Notice of Intent in accordance with §305.43 of this title (relating to Who Applies);

(B) the facility has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director; or

(C) the facility is the subject of an unresolved agency enforcement action in which the executive director has issued a written notice of enforcement.

(4) If authorization to inject waste is denied under this subsection, the executive director may require the person whose authorization is denied to apply for and obtain an individual permit. If the facility is seeking to replace its individual permit with general permit coverage, but the facility's general permit authorization is denied, the facility shall apply for renewal of the individual permit prior to the expiration date of its current individual permit to maintain authorization to inject waste, in accordance with §305.63 of this title (relating to Renewal).

(d) The following requirements apply to suspensions of authorizations and Notices of Intent:

(1) The general permit shall describe the procedures for suspension of authorization and Notices of Intent under a general permit. The general permit shall require the executive director to provide written notice to a permittee that the executive director intends to suspend the permittee's authority to inject waste under a general permit, including:

(A) a brief statement of the basis for this decision under this subsection;

(B) a statement of whether the permittee shall immediately cease injection of waste;

(C) a statement setting the deadline for filing the application for an individual permit; and

(D) a statement that the permittee's waste injection authorization under the general permit shall be suspended on the effective date of the commission's action on the individual permit application unless the commission expressly provides otherwise, or unless the executive director has required the permittee to immediately cease injection of waste.

(2) If a permittee's authorization under a general permit is suspended, the permittee shall immediately cease waste injection.

(3) The executive director may require the person whose authorization to inject or operate an injection well is suspended to apply for and obtain an individual permit.

(4) After providing written notice to the permittee, the executive director shall suspend authorization to inject or operate an injection well under an existing general permit for the following reasons:

(A) the quantity of waste, the type of waste, or the type of operation does not comply with the general permit;

(B) the permittee or facility:

(i) has failed to pay any portion of a delinquent fee or charge assessed by the executive director;

(ii) is not in compliance with all requirements, conditions, and timeframes specified in an unexpired commission final enforcement order relating to the activity regulated by the general permit: or

(iii) is subject to an unexpired enforcement order that requires the facility to comply with operating conditions different from or additional to the requirements of the general permit; and

(C) an application is not received by the deadline specified by rule or in the general permit.

(5) After providing written notice to the permittee, the executive director may suspend authorization to inject waste under an existing general permit for reasons including, but not limited to, the following:

(A) a change has occurred in the availability of demonstrated technology or practices for the prevention, control, or abatement of pollutants applicable to the injection necessary to be implemented to meet applicable federal or state standards;

(B) the owner and/or the operator of the facility has not filed a Notice of Intent in accordance with §305.43 of this title;

(C) circumstances have changed since the time of the Notice of Intent so that injection of waste is no longer appropriately controlled to meet applicable standards under the general permit, or either a temporary or permanent cessation of the authorized waste injection is necessary;

(D) the facility has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director; and

(E) the permittee or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated.

(e) The commission, after hearing, shall deny or suspend a permittee's authority to inject waste under a general permit if the commission determines that the permittee operates any facility for which the permittee's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. A hearing under this subsection is not subject to Texas Government Code, Chapter 2001.

§331.204. Permit Duration, Amendment, and Renewal.

(a) A general permit may be issued for a term not to exceed ten years. After notice and comment as provided by §331.202 of this title (relating to Public Notice, Public Meetings, and Public Comment), a general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed ten years each.

(b) A general permit remains in effect until the commission amends, revokes, cancels or renews the general permit, or until it expires, whichever comes first. If before its expiration, the commission proposes to renew a general permit, the general permit shall remain in effect after the expiration date for those existing permittees covered by the general permit until the date on which the commission takes final action on the proposed permit renewal. No new Notices of Intent will be accepted or new authorizations honored for authorization under the general permit after the expiration date.

(c) Upon issuance of a renewed or amended general permit, all owners or operators, including those covered under the expired general permit, shall submit a Notice of Intent in accordance with the requirements of the new permit.

(d) If the commission has not proposed to renew a general permit at least 90 days before its expiration date, permittees authorized under the general permit shall submit an application for an individual

permit before the general permit's expiration. If an application for an individual permit is submitted before the general permit's expiration, authorization under the expired general permit remains in effect until the issuance or denial of an individual permit.

(e) The commission may, through renewal or amendment of a general permit, add or delete requirements or limitations to the permit. The commission may provide in the general permit a reasonable time to allow existing permittees covered by the general permit to make the changes necessary to comply with any additional requirements deemed substantive by the commission.

(f) Before issuing a general permit, the commission shall review the general permit for consistency with the Texas Coastal Management Plan (CMP). The commission must find that the general permit is consistent with the applicable CMP goals and policies and that it will not adversely affect any applicable coastal natural resource areas as identified in the CMP before the commission may issue the general permit.

§331.205. Fees for Notice of Intent and Notice of Change.

(a) A person shall include with the notice of intent requesting coverage under the terms of a general permit issued under this subchapter a fee of $100 for each disposal well.

(b) A permittee authorized under a general permit issued under this subchapter shall include with each notice of change a fee of $100 for each disposal well.

§331.206. Annual Fee Assessments.

A person authorized by a general permit shall pay annual facility and waste management fees according to Chapter 335, Subchapter J of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses) unless specified in the general permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.34

The Texas Water Development Board (board) proposes an amendment to §363.34 relating to criteria for listing financial guarantors acceptable to the board. The rules in Chapter 363 apply to state funded loan programs. The amendment adds the word "stable" after the word "triple-A." This amendment is proposed to clarify that the board will consider placement on the list of authorized financial guarantors only those entities who have attained a triple-A stable rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.

The board proposes this amendment because of recent market fluctuations related to investments by financial guarantors in certain collateralized debt obligations based on subprime mortgages. The board's purpose is to ensure the authorized list of financial guarantors for board loans have attained the highest rankings currently available by the rating agencies.

The proposed amendment to §363.34(b)(1) is authorized pursuant to Water Code §15.005 relating to Consideration of Certain Applications relating to flood control projects from the Water Loan Assistance Program, §15.105 relating to Considerations in Passing on Applications from the Water Loan Assistance Program, §15.403 relating to rules to carry out the Research and Planning Program, §15.403 relating to rules for Water and Wastewater Financial Assistance for Disadvantaged Rural Communities, §15.958 relating to rules to administer the Colonia Self-Help Program, §15.977 relating to rules for loans from the Water Infrastructure Fund, §15.995 relating to rules necessary to administer loans from the Rural Water Assistance Fund, §16.342 relating to rules necessary to administer the economically distressed areas programs, §36.372 relating to rules necessary to administer the Groundwater District Loan Assistance Fund, and §6.190 authorizing the board to adopt rules necessary to carry out its powers and duties.

Ms. Melanie Callahan, Chief Financial Officer, has determined that for the first five years the amended section is in effect, there will be no significant fiscal implications for state or local governments as a result of implementing the amendment to this section. Local governments that require insurance to guarantee a loan from the board are not expected to incur higher insurance rates as the result of this proposed amendment because the board has always required high ratings for financial guarantors. This amendment simply clarifies the type of rating required for board approval of the use of any guarantor.

Ms. Callahan has determined that for the first five years the rules is in effect there are not expected to be any reductions in the cost to the state or to local governments as the result of administering the rule.

Ms. Callahan has determined that during the first five years this amendment is in effect that there is not expected to be any increase in or loss of revenue to the state or local governments as the result of administering the rule.

Ms. Callahan has also determined that for each year of the first five years the section is in effect, the public benefit will be better protection from potential bond defaults because the board's selected financial guarantors will have the highest rating available from the rating agencies. Further, Ms. Callahan has determined that there is no economic cost to the board, the entity required to comply with the rule. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposed amendment to §363.34(b)(1) may be submitted by mail to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580. All comments must be received by 5:00 p.m. on March 26, 2008.

This amendment is proposed under §6.101, Texas Water Code, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board pursuant to §15.605, Texas Water Code, which requires the board to adopt rules to administer the fund.

Statutory authority: Texas Water Code, §6.101. The amendment of this section is proposed under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board. No other statute or codes are affected by this amendment.

§363.34. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

(a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.

(b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple-A stable insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.

(c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.

(d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2008.

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Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-4946

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.53

The Texas Water Development Board (board) proposes an amendment to §371.53 relating to criteria for listing financial guarantors acceptable to the board. The amendment adds the word "stable" after the word "triple-A." This amendment is proposed to clarify that the board will consider placement on the list of authorized financial guarantors only those entities that have attained a triple-A stable rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.

The board proposes this amendment because of recent market fluctuations related to investments by financial guarantors in certain collateralized debt obligations based on subprime mortgages. The board's purpose is to ensure the authorized list of financial guarantors for board loans have attained the highest rankings currently available by the rating agencies.

The proposed amendment to §371.53(b)(1) is authorized pursuant to Water Code §15. 605 that requires the board to adopt necessary rules to carry out Subchapter J relating to Financial Assistance for Water Pollution Control.

Ms. Melanie Callahan, Chief Financial Officer, has determined that for the first five years the amended section is in effect, there will be no significant fiscal implications for state or local governments as a result of implementing the amendment to this section. Local governments that require insurance to guarantee a loan from the board are not expected to incur higher insurance rates as the result of this proposed amendment because the board has always required high ratings for financial guarantors. This amendment simply clarifies the type of rating required for board approval of the use of any guarantor.

Ms. Callahan has determined that for the first five years the rules is in effect there are not expected to be any reductions in the cost to the state or to local governments as the result of administering the rule.

Ms. Callahan has determined that during the first five years this amendment is in effect that there is not expected to be any increase in or loss of revenue to the state or local governments as the result of administering the rule.

Ms. Callahan has also determined that for each year of the first five years the section is in effect, the public benefit will be better protection from potential bond defaults because the board's selected financial guarantors will have the highest rating available from the rating agencies. Further, Ms. Callahan has determined that there is no economic cost to the board, the entity required to comply with the rule. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposed amendment to §371.53(b)(1) may be submitted by mail to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580. All comments must be received by 5:00 p.m. on March 26, 2008.

This amendment is proposed under §6.101, Texas Water Code, which authorizes the board to adopt rules necessary to carry out

the powers and duties of the board pursuant to §15.605, Texas Water Code, which requires the board to adopt rules to administer the fund.

Statutory authority: Texas Water Code, §6.101. The amendment of this section is proposed under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board. No other statute or codes are affected by this amendment.

§371.53. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

(a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.

(b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple-A stable insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.

(c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.

(d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2008.

TRD-200801128
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-4946

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 4. BOARD ACTION ON APPLICATIONS

31 TAC §375.53

The Texas Water Development Board (board) proposes an amendment to §375.53 relating to criteria for listing financial guarantors acceptable to the board. The amendment adds the word "stable" after the word "triple-A." This amendment is proposed to clarify that the board will consider placement on the list of authorized financial guarantors only those entities that have attained a triple-A stable rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.

The board proposes this amendment because of recent market fluctuations related to investments by financial guarantors in certain collateralized debt obligations based on subprime mortgages. The board's purpose is to ensure the authorized list of financial guarantors for board loans have attained the highest rankings currently available by the rating agencies.

The proposed amendment to §375.53(b)(1) are authorized pursuant to Water Code §15.601 which authorizes the creation of the state water pollution control revolving fund and which authorizes the board to administer the fund through rules adopted by the board. This proposed amendment is a rule necessary to administer the fund. Additionally, Water Code §15.603(f) relating to the creation and administration of the revolving fund program authorizes the board to administer the fund in the manner provided by the rules of the board. Finally, Water Code §15.605 requires the board to adopt necessary rules to carry out Subchapter J relating to Financial Assistance for Water Pollution Control.

Ms. Melanie Callahan, Chief Financial Officer, has determined that for the first five years the amended section is in effect, there will be no significant fiscal implications for state or local governments as a result of implementing the amendment to this section. Local governments that require insurance to guarantee a loan from the board are not expected to incur higher insurance rates as the result of this proposed amendment because the board has always required high ratings for financial guarantors. This amendment simply clarifies the type of rating required for board approval of the use of any guarantor.

Ms. Callahan has determined that for the first five years the rules is in effect there are not expected to be any reductions in the cost to the state or to local governments as the result of administering the rule.

Ms. Callahan has determined that during the first five years this amendment is in effect that there is not expected to be any increase in or loss of revenue to the state or local governments as the result of administering the rule.

Ms. Callahan has also determined that for each year of the first five years the section is in effect, the public benefit will be better protection from potential bond defaults because the board's selected financial guarantors will have the highest rating available from the rating agencies. Further, Ms. Callahan has determined that there is no economic cost to the board, the entity required to comply with the rule. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposed amendment to §375.53(b)(1) may be submitted by mail to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580. All comments must be received by 5:00 p.m. on March 26, 2008.

This amendment is proposed under §6.101, Texas Water Code, which authorizes the board to adopt rules necessary to carry out

the powers and duties of the board pursuant to §15.605, Texas Water Code, which requires the board to adopt rules to administer the fund.

Statutory authority: Texas Water Code, §6.101. The amendment of this section is proposed under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board. No other statute or codes are affected by this amendment.

§375.53. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

(a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.

(b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple-A stable insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.

(c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.

(d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2008.

TRD-200801129
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-4946

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.438

The Comptroller of Public Accounts proposes an amendment to §3.438, concerning signed statements for purchasing dyed diesel fuel tax free. Subsection (c) is amended to provide that signed statements used to purchase dyed diesel fuel tax free be substantially in the form provided by the comptroller and to delete the telephone numbers for Telecommunication Device for the Deaf (TDD) that are no longer used. Copies of blank signed statement forms will no longer be available for inspection at the office of the *Texas Register*.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would be in clarifying the procedures required to purchase tax-free diesel fuel. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §162.206.

§3.438. Signed Statements for Purchasing Dyed Diesel Fuel Tax Free ~~[(Tax Code, §162.206)]~~.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) End User Number. A person who wants to use a signed statement to purchase dyed diesel fuel tax free for use in nonhighway equipment must apply to the comptroller for an End User Number. The comptroller will issue to a qualified applicant an End User Number with a prefix of DD (for non-agriculture off road equipment) or AG (for agriculture off road equipment) depending on the manner in which the applicant will use the dyed diesel fuel. A person cannot use a signed statement to purchase tax-free dyed diesel fuel unless the person holds an End User Number issued by the comptroller.

(c) Signed Statement. A person with a valid End User Number may purchase dyed diesel fuel tax free for nonhighway use by providing the seller with a signed statement. The signed statement must be substantially in the form provided by the comptroller and is subject to the limitations that are stated in paragraphs (2), (3) and (4) of this subsection. Copies of the blank signed statements [~~are available for inspection at the office of the Texas Register. Copies~~] may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528 or requested by calling 512/463-4600, or our toll-free number 1-800-252-1383. [~~(From a Telecommunication Device for the Deaf (TDD) only, call 512/463-4621 or 1-800-248-4099 toll free)~~] Taxpayers may download copies at www.window.state.tx.us.

(1) The signed statement must include the purchaser's End User Number, must be signed by the buyer or the buyer's authorized representative, and must specify that:

(A) only dyed diesel fuel will be purchased using the signed statement;

(B) all dyed diesel fuel will be used by the buyer and will not be resold; and

(C) none of the dyed diesel fuel will be delivered into the fuel supply tanks of motor vehicles operated on public highways.

(2) A person issued an End User Number beginning with DD may buy, and a licensed diesel fuel supplier, permissive supplier, or distributor may sell, dyed diesel fuel tax free using a signed statement subject to the following limitations:

(A) not more than 7,400 gallons of dyed diesel fuel may be purchased or sold in a single delivery; or

(B) not more that 10,000 gallons of dyed diesel fuel may be purchased or sold to a purchaser during a month. The purchase, sale, or delivery that causes the 10,000 gallon limit to be exceeded during a month is not taxable. Any subsequent purchase, sale, or delivery made during the same month is taxable.

(3) A person who has been issued an end user number beginning with DD and who uses the dyed diesel fuel exclusively in the original production of oil and gas, or to increase the production of oil and gas, must obtain a letter of exception authorizing the person to exceed the 10,000 gallon limit. Examples of uses that may occur in the original production or to increase production of oil and gas include the use of dyed diesel fuel to drill, fracture, perforate, squeeze cement, acidize, log, plug back, complete, plug and abandon, install a casing liner, pull or reset a casing liner, swab, drill out a plug, jet, pack gravel or workover, and perform a hot oil treatment on a formation. Oil and gas production does not include maintaining the site, mowing, painting, gauging tanks, changing pumps, performing rod or tubing jobs, fishing for rods or tubing, repairing a tubing leak, changing a packer or anchor, performing hot oil or water treatment on casing, tubing or flow lines, and transporting. A person who uses dyed diesel fuel exclusively in the original production of oil and gas or to increase the production of oil and gas, may buy, and a licensed diesel fuel supplier, permissive supplier, or distributor may sell, dyed diesel fuel tax free by using a letter of exception and a signed statement, subject to the following limitations:

(A) not more than 7,400 gallons of dyed diesel fuel may be purchased or sold in a single delivery; or

(B) not more than 25,000 gallons of dyed diesel fuel may be purchased or sold to a purchaser during a calendar month. The purchase, sale, or delivery that causes the 25,000 gallon limit to be exceeded during a calendar month is not taxable. Any subsequent purchase, sale, or delivery made during the same calendar month is taxable.

(4) A person who has been issued an end user number beginning with AG and who uses dyed diesel fuel exclusively for an agricultural purpose as described in Tax Code, §162.001, may buy, and a diesel fuel licensed supplier, permissive supplier, or distributor may sell, dyed diesel fuel tax free using a signed statement subject to the following limitations:

(A) not more that 7,400 gallons of dyed diesel fuel may be purchased or sold in a single delivery; or

(B) not more than 25,000 gallons of dyed diesel fuel may be purchased or sold to an end user during a calendar month. The purchase, sale, or delivery that causes the 25,000 gallon limit to be exceeded during a calendar month is not taxable. Any subsequent purchase, sale, or delivery made during the same calendar month is taxable.

Figure: 34 TAC §3.438(c)(4)(B) (No change.)

(d) A person who exceeds the limitations in subsection (c) of this section shall be required to obtain a dyed diesel fuel bonded user license.

(e) A separate operating division of a corporation may apply for and receive an End User Number to buy dyed diesel fuel tax free using a signed statement if the division:

(1) does not resell the fuel;

(2) consumes the fuel; and

(3) maintains separate storage apart from other corporate divisions.

(f) The signed statement remains in effect until:

(1) it is revoked in writing by either the buyer or seller; or

(2) the comptroller notifies the supplier or distributor in writing or by means of electronic transmission that the buyer may no longer make tax-free purchases.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801260
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 475-0387

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CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER N. FUNDS ACCOUNTING--ACCOUNTING POLICY STATEMENTS

34 TAC §5.160

The Comptroller of Public Accounts proposes an amendment to §5.160, concerning incorporation by reference: accounting policy statements 2006 - 2007. The accounting policy statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System (USAS) and for preparation of the annual financial report. Each accounting policy statement contains legal references, a background section, comptroller requirements and state agency requirements, and division contact if more information is needed. Section 5.160 is also being amended to correct the applicable biennium years and the effective date of the accounting policy statements.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment would benefit the public by facilitating the collection and dissemination of state financial information. The proposed amendment would have no significant fiscal impart on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed rules may be addressed to Suzy Whittenton, Director, Fiscal Management Division, Comptroller of Public Accounts, P. O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Government Code, §§403.011, 2101.012, 2101.035 and 2101.037 which provide the comptroller with the authority to prescribe rules and procedures relating to the operation of the Uniform Statewide Accounting System, the preparation of the annual financial report and supervising the state's fiscal concerns.

The amendment implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

§5.160. Incorporation by Reference: Accounting Policy Statements 2008 - 2009 [2006 - 2007].

The "Accounting Policy Statements 2008 - 2009 [~~2006 - 2007~~]," issued by the Fund Accounting Division of the Comptroller of Public Accounts as of August 31, 2007 [~~November 22, 2005~~], are incorporated by reference and filed with the secretary of state. All statements are published by the comptroller in Austin, and copies may be obtained from the comptroller upon request. All statements are also available on the comptroller's website at: https://fmx.cpa.state.tx.us/fm/pubs/aps/index.php.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200801261
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER B. PROHIBITIONS

37 TAC §35.14

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §35.14, concerning Good Standing. Repeal of the section is necessary due to it having been rendered redundant by House Bill 2833, Acts 2007, 80th Legislature, Regular Session (amending Chapter 1702 of the Texas Occupations Code).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be greater clarity and simplicity in the Bureau's enforcement of Chapter 1702.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Government Code does not apply to this repeal. Accordingly, the department is not required to complete a takings impact assessment regarding this repeal.

Comments on the repeal are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.14. Good Standing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801262
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 424-2135

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SUBCHAPTER C. STANDARDS

37 TAC §§35.42, 35.43, 35.45

The Texas Department of Public Safety proposes new §§35.42, 35.43, and 35.45, concerning Standards. The new sections are in response to and as required by House Bill (H.B.) 2833, Acts 2007, 80th Legislature, Regular Session (amending Chapter 1702 of the Texas Occupations Code).

New §35.42 is necessary because §5 of H.B. 2833, §1702.113(b) of the Texas Occupations Code was amended to require that the Board establish which Class B misdemeanors are to be disqualifying under that section. The Board is of the opinion that the prohibitive Class B misdemeanors are directly related to the provision of services regulated by the Private Security Act, and that the discretionary offenses may, under certain circumstances, be so related, in that the license may offer the license holder an opportunity to commit further such offenses. In addition, the Board believes that the commission of such offenses raises doubts regarding whether the individual's judgment and character is suited to the provision of regulated services.

New §35.43 is necessary because §5 of H.B. 2833, §1702.113(a) of the Texas Occupations Code was amended to require that the Board establish the circumstances under which an "other than honorable discharge" is to be disqualifying under that section. The Board is of the opinion that military discharges under "other than honorable conditions" should be prohibitive when they are based on classified criminal offenses, and that the term of disqualification should track the statutory criteria associated with the level of the offense. For those that are not based on a classifiable offense, the Board believes a ten year term of disqualification is appropriate, based on the various circumstances that can result in such a discharge.

New §35.45 is necessary because §18 of H.B. 2833, §1702.3615(c) of the Texas Occupations Code was amended to require that the Board establish the factors to be considered in determining whether circumstances warrant approval of an application where the application has been denied solely because of the applicant's status as a registered sex offender. The Board is of the opinion that the proposed criteria will enable it to fairly evaluate the applicant's fitness for licensure. The criteria include the age of the applicant at the time of the underlying offense, the classification of the offense, any evidence of rehabilitation or recidivism, the amount of time that has passed, and the relationship between the offense and the occupation for which the individual seeks a license, including whether licensure will facilitate the commission of a similar offense.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater consistency and fairness in the Bureau's enforcement of Chapter 1702.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.42. Disqualifying Class B Misdemeanor Offenses.

(a) Pursuant to the requirement of §1702.113(b), the following Class B misdemeanor offenses (as reflected in the Texas Penal Code) shall be disqualifying for five years from the date of conviction:

(1) 22.01 Assault (by threat or offensive contact with sports participant).

(2) 22.07 Terroristic threat.

(3) 25.04 Enticing a child from lawful custody.

(4) 31.03 Theft ($50 to $500).

(5) 32.41 Issuance of bad check (for child support).

(6) 32.45 Misapplication of fiduciary property.

(7) 32.46 Securing execution of a document by deception.

(8) 37.08 False report to police officer.

(9) 37.12 False identification as peace officer.

(10) 39.02 Abuse of official capacity.

(11) 39.05 Failure to report death of prisoner.

(12) 42.01 Disorderly conduct (firearm in public place).

(13) 42.02 Riot.

(14) 42.061 Silent or Abuse Calls to 911 Service.

(b) Pursuant to the requirement of §1702.113(b), the following Class B misdemeanors (as reflected in the Texas Penal Code) are disqualifying for five years from the date of conviction, subject to the discretionary authority of the Manager (as delegated by the Board) to consider mitigating circumstances:

(1) 21.08 Indecent exposure.

(2) 30.05 Criminal Trespass (not habitation).

(3) 31.12 Theft of or tampering with multichannel video or information services (and conviction).

(4) 32.52 Fraudulent, Substandard or Fictitious Degree.

(5) 33.02 Breach of computer security.

(6) 33.A.02 Unauthorized use of telecommunications service (less than $500).

(7) 33.A.04 Theft of telecommunications service (less than $500).

(8) 38.02 Failure to identify (if a fugitive).

(9) 38.04 Evading arrest or detention.

(10) 42.07 Harassment.

(c) Class B misdemeanors not listed in subsections (a) or (b) of this section are not disqualifying under §1702.113.

§35.43. Other Than Honorable Discharges.

Pursuant to the requirement of §1702.113(a) of the Occupations Code, individuals who are discharged from the United States Armed Services under other than honorable conditions are disqualified from receiving a license, commission, or registration for the following time periods:

(1) for five years after the date of discharge if the discharge was based on a criminal offense equivalent to a Class B misdemeanor;

(2) for ten years after the date of discharge if the discharge was based on a criminal offense equivalent to a Class A misdemeanor;

(3) for twenty years after the date of discharge if the discharge was based on a criminal offense equivalent to a felony; and

(4) for ten years after the date of discharge if the discharge was for any other reason.

§35.45. Sex Offender Registrants.

Pursuant to the requirement of §1702.3615(c) of the Occupations Code, the following factors will be employed in the Board's determinations under that provision:

(1) The age of the applicant at the time of the offense giving rise to the registration requirement;

(2) The classification of the offense;

(3) Evidence of rehabilitation or recidivism;

(4) The amount of time that has passed since the commission of the offense;

(5) The relationship between the offense and the occupation for which the individual seeks a license, including whether licensure will facilitate the commission of a similar offense.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801263
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 424-2135

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.61

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §141.61, concerning representation of an offender. The purpose of the amendment is to clarify the review period for offenders who are eligible for parole review.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method of selection of certain offenders to undergo a TDCJ rehabilitation program prior to release. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §508.082, and §508.083, Government Code. Section 508.082 requires the board to adopt rules relating to the submission and presentation of information and arguments to the board, a parole panel, and the department for and in behalf of an inmate. Section 508.083 relates to representation of an inmate in a matter before the board or a parole panel.

No other statutes, articles or codes are affected by these amendments.

§141.61. Representation of an Offender.

(a) Persons representing an offender may appear before a member of the board panel designated to consider the offender's case.

(b) Requests for appearances by persons representing offenders shall be only when the offender's case is under review, during the review period, and at the discretion of the members of the parole panel designated to review the case.

(c) The time, place, and manner of contact between a person representing an offender and a member of the board or an employee of the board shall be established by the members of the parole panel designated to review the case.

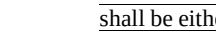
(d) For this purpose, the review period shall mean a period greater than two[~~four~~] months but less than six months prior to the month of the next scheduled review.

(e) For the purpose of Discretionary Mandatory Review, the review period shall mean a period greater than thirty days but less than seventy-five days prior to the projected release date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801257
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 406-5388



CHAPTER 145. PAROLE
SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.15

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.15, concerning action upon review; extraordinary vote. The amendment proposes new language to establish a voting option for placement of offenders into the Sex Offender Education Program (SOEP) or the Sex Offender Treatment Program (SOTP).

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method of selection of certain offenders to undergo a TDCJ rehabilitation program prior to release. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §508.036, Government Code, which provides the board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

No other statutes, articles or codes are affected by these amendments.

§145.15. Action Upon Review; Extraordinary Vote.

(a) This section applies to any offender convicted of a capital offense under §21.11(a)(1) or §22.021, Penal Code, or who is required under §508.145(c), Government Code, to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) FI-1: Release the offender when eligible; or

(B) FI-4R (Month/Year): Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be either the Sex Offender Education Program (SOEP) or the Sex Offender Treatment Program (SOTP).

(C) [~~(B)~~] FI-18 R (Month/Year): Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year): Deny release and set the next review date for 36 months following the panel decision date; or

(B) SA: The offender's minimum or maximum expiration date is less than 36 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number): A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number): Deny release and set the next review date for 36 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number): Deny release and order serve-all if the offender is within 36 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) in this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS: Release to mandatory supervision; or

(2) DMS (Month/Year): Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS: The board shall vote FI-1 and impose special condition "O" - "The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS.

(B) Deny MRIS: The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801256
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 406-5388

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.1

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 435, Fire Fighter Safety, §435.1, concerning protective clothing. The purpose of the proposed amendment is to offer a method to the fire service to prolong the in-service life of protective clothing that must be retired at 10 years from the date of manufacture as required by the National Fire Protection Association Standard 1851 - 2008 Edition ("Standard 1851"). The revised edition of the standard went into effect on June 24, 2007 and, pursuant to §419.040 Texas Government Code, ultimately must be placed in effect for the fire service in Texas.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that if implemented immediately in accordance with its terms, Standard 1851 could cause immediate, significant, and burdensome costs on local governments. The intent of the amendments to §435.1 is to allow fire departments to continue using protective clothing beyond the ten-year mandated retirement age as long as the protective clothing passes the advanced inspections found in Standard 1851. There are no cost implications for state government. Under the proposed amendments to §435.1 local government may incur costs to replace any protective clothing older than ten years that does not meet the inspection provisions set forth in the Standard 1851. Fire departments that have protective clothing older than 10 years could incur costs up to $1,800 per person to replace the protective clothing. There are approximately 26,000 sets of protective clothing in service in the approximately 500 regulated fire departments in Texas. Under the proposed amendment, the department will have the option to perform an advanced inspection on ten year and older protective clothing instead of replacing it immediately. Protective clothing that fails the advanced inspection may repair it to a level of passing the inspection and continue using the protective clothing. Repair cost is estimated to be half the amount to replace existing ten-year-old protective clothing, which is far less than the cost of immediate compliance.

Mr. Soteriou has also determined that the proposed amendments, the public benefit anticipated as a result of enforcing the amendments would be to ensure the safety of fire fighters wearing the protective clothing when they are involved in fire suppression efforts. There are no additional costs of compliance for small or large businesses or individuals as they are not required to comply with these proposed amendments. Volunteer fire departments are not affected by this amendment.

Comments regarding these proposed amendments may be submitted, in writing, within 90 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

§435.1. Protective Clothing.

(a) A regulated fire department shall:

(1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists. A complete set of protective clothing shall consist of garments including bunker coats, bunker pants, boots,

gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association suitable for the tasks the individual is expected to perform. The National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing; and

(3) maintain and provide upon request by the commission, a departmental standard operating procedure regarding the use, selection, care, and maintenance of protective clothing which complies with NFPA 1851, Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles.

(A) Fire departments shall use the advanced inspection requirements found in NFPA 1851 - 2008 Edition (June 24, 2007) to evaluate all protective clothing purchased prior to the effective date of the NFPA 1971 - 2007 Edition (August 17, 2006) to determine retirement.

(B) All personnel protective clothing purchased under NFPA 1971 - 2007 Edition or later will be subject to the 10 year retirement provision (5 year outer shell on ARFF gear) stipulated in NFPA 1851 - 2008 Edition.

(b) An entity may continue to use protective clothing in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the protective clothing constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.

(c) It has been demonstrated that the product identified as BREATHE-TEX®, manufactured by Aldan Engineered Coated Fabrics, used as a moisture barrier in some protective clothing, may fail unpredictably and allow moisture to pass through the barrier. This product is the subject of recalls by some manufacturers. Pursuant to the Government Code, §419.040(b), the commission has determined that continued use of protective clothing having the moisture barrier identified above constitutes an undue risk to the wearer. Therefore, all regulated fire departments shall as of January 1, 2002, remove from service all protective clothing containing BREATHE-TEX® [~~Breathe-Tex®~~] moisture barriers.

(d) Protective clothing in use or contracted for prior to January 1, 2002, shall be exempted from the record keeping requirements contained in Section 2.3, Records, of NFPA 1851.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801212
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Proposed date of adoption: June 12, 2008
For further information, please call: (512) 936-3838

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

40 TAC §109.243

The Texas Health and Human Services Commission ("HHSC") proposes amendments to a rule of the Texas Department of Assistive and Rehabilitative Services ("DARS"), Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter B, Board for Evaluation of Interpreters and Interpreter Certification, Division 1, Definitions and Board Operations, §109.243, Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate.

The proposed amendments to §109.243 add more substantive grounds for denying, suspending, or revoking the certification of interpreters for the deaf, including grounds relating to allegations of criminal behavior or other misconduct by interpreters certified by DARS. Complaints against certified interpreters have increased and become more serious in nature since the adoption of recent federal regulations by the U.S. Department of Education (specifically 34 Code of Federal Regulations §300.156, published August 2006) and state rules by the Texas Education Agency (specifically 19 TAC §89.1131(a) and (d), adopted November 2007), which require school districts to employ only licensed or certified interpreters for deaf students. Complaints received by DARS have included allegations of crimes against children and disabled individuals. Currently, the permanent rules of DARS relating to the certified interpreter program covers only convictions for criminal acts, which in many cases may take years to occur, if ever. These amendments will allow DARS to initiate disciplinary proceedings on allegations of rule violations and to take appropriate disciplinary action where legally supported by facts and credible evidence, to protect the health and safety of the public.

Amended §109.243 is also being proposed to replace Emergency §109.243, which was adopted by HHSC in response to HHSC's finding that imminent peril to public health, safety, and welfare required the emergency adoption of §109.243, as amended. If Emergency §109.243 is still in effect at the time of adoption of proposed amended §109.243, Emergency §109.243 will be withdrawn contemporaneously with the adoption of proposed amended §109.243.

In accordance with the requirements of Texas Government Code §2001.039, DARS has conducted a four-year rule review of §109.243, as required by state law. DARS has determined through its review of this rule that the reason for initially adopting the rule, which was to protect the general public from misconduct and/or illegal acts of certified interpreters, continues to exist. However, the rule review identified areas where amendments

were needed to strengthen the rule. These amendments are being proposed for the reasons described above in this preamble. Chapter 109 was proposed for review in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8864).

Bill Wheeler, Chief Financial Officer, Texas Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the proposed amendment will be in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule amendment.

Mr. Wheeler has determined that for each year of the first five years the proposed amendment will be in effect, the public benefit anticipated as a result of enforcing the amendment will be the assurance that certified interpreters alleged to have violated the rule will be investigated, disciplinary action taken where supported by the facts and credible evidence, and violators removed from interpreting for or around vulnerable members of the public.

Mr. Wheeler has also determined that there will be no probable economic cost to persons who are required to comply with the proposed amendment. Further, in accordance with Texas Government Code §2001.022, he has determined that the proposed rule amendments will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposed amendment will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed amendment and the four-year rule review which proposes readoption of the rule with amendments may be submitted within 30 days of publication of this proposal in the *Texas Register* to: Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756,.

The amendment is proposed pursuant to HHSC's statutory rulemaking authority under Texas Human Resources Code, Chapter 81, §81.007(h), and Texas Government Code, Chapter 531, §531.0055(e), which provide the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.243. Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate.

[~~(a)~~] The Office may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) violations of federal and state laws that are substantiated by credible evidence, whether or not there is a complaint, indictment, or conviction, such violations including, but not limited to, the following: [~~conviction of a felony or any offense involving theft or controlled substances. In determining if the criminal conviction has a direct bearing on whether the interpreter or applicant should be entrusted to serve the public, the Office considers the particular facts and circumstances of each case to include evidence of those matters required by Texas Revised Civil Statutes, Articles 6252-13c and 13d. The crimes having such a direct bearing include criminal conduct of homicide, rape, sexual abuse, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, perjury, and those relating to controlled substances;~~]

(A) any felony, including but not limited to homicide, rape, sexual abuse of a child, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, and perjury;

(B) any misdemeanor involving moral turpitude that involves dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflects adversely on the certificate holder's honesty, trustworthiness, or fitness to interpret under the scope of the person's certificate; or

(C) any offense involving theft or controlled substances;

(2) engaging in sexually inappropriate behavior with or comments directed at a consumer, including individuals who are part of the interpreted situation, or a person under the age of eighteen; [~~use or under the influence of drugs or intoxicating liquors to an extent that affects his or her professional competence. This includes: the use or under the influence of drugs or intoxicating liquors during an interpreting assignment, whether or not controlled, to an extent that is dangerous to the interpreter or applicant, or any other members of the public; the use or under the influence of drugs or intoxicating liquors during an interpreting assignment, to the extent that such use impairs the interpreter's or applicant's ability to perform the work of interpreting in a competent and responsible manner;~~]

(3) using or being under the influence of drugs, whether or not controlled, or intoxicating liquors to an extent that affects the interpreter's professional competence;

(4) [~~(3)~~] impersonating another person who holds an interpreter certification from the office;

(5) [~~(4)~~] allowing another person to use their interpreter certification;

(6) [~~(5)~~] representing oneself or another interpreter as having a level of certification different from the actual level of certification awarded by the office, in excess of the actual level of certification;

(7) [~~(6)~~] using fraud, deception, which includes, but is not limited to cheating, or misrepresentation in an application for certification, during the certification examination or evaluation, or in the certification maintenance or renewal process;

(8) [~~(7)~~] [~~willfully~~] violating or aiding in the violation of the CODE OF PROFESSIONAL CONDUCT described in §109.245 of this title (relating to Code of Professional Conduct);

(9) [~~(8)~~] being grossly incompetent or grossly negligent in performing the duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of their duties;

(10) [~~(9)~~] being adjudicated mentally incompetent by a court of competent jurisdiction;

(11) [~~(10)~~] intentionally harassing, abusing, or intimidating, either physically or verbally, a consumer, including individuals who are part of the interpreted situation; a board member; [~~,~~] evaluator; [~~,~~] or any staff of the Department;

(12) [~~(11)~~] intentionally divulging or using inappropriately any aspect of confidential information relating to the certification evaluation including content, topic, vocabulary, identity of individuals involved in the tests, skills, written test questions, and any other testing materials deemed confidential;

(13) [~~(12)~~] failure to meet requirements for certification maintenance;

(14) [~~(13)~~] engaging in the practice of interpreting while certification is suspended;

(15) [~~(14)~~] falsification of re-certification documents by altering original letters, certificates issued through continuing education, or attendance verification; or

(16) [~~(15)~~] violation of a statute, rule, or policy concerning [~~of~~] the Office or Department.

[~~(b) Authority: Human Resources Code, §81.007(h).~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801249
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 424-4050

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.3

The Texas Department of Transportation (department) proposes amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 3560, 80th Legislature, 2007, adopted Government Code, §2155.0011, which transferred state purchasing duties from the Texas Building and Procurement Commission to the comptroller. Government Code, §2155.076 requires state agency protest rules to be consistent with protest rules adopted by the comptroller.

Amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act, update agency titles and statutory references to reflect the transfer of state purchasing responsibilities to the comptroller. Changes to the definitions, the deadline for filing a protest and an appeal, and document retention requirements are made to make the rules consistent with the rules adopted by the comptroller's office. Various minor grammatical amendments have also been made to clarify the existing provisions of this section.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Scott Burford, Director, General Services Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Burford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be efficient and effective resolution of protests concerning purchases. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.3 may be submitted to Scott Burford, Director, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on April 14, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and, more specifically, Government Code, §2155.076, which requires the department to adopt rules concerning protest of purchase.

CROSS REFERENCE TO STATUTE

Government Code, §2155.076.

§9.3. Protest of Department Purchases under the State Purchasing and General Services Act.

(a) Purpose. The purpose of this section is to provide a procedure for vendors to protest purchases made by the department. Purchases made by the Texas Procurement and Support Services division of the Comptroller of Public Accounts office [~~General Services Commission~~] on behalf of the department are addressed in 34 TAC Chapter 20 [~~1 TAC Chapter 111~~].

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Government Code, Chapters 2151-2177, the State Purchasing and General Services Act.

(2) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of Transportation.

(4) Director of general services--The director of the general services division of the department.

(5) Director of purchasing--The director of purchasing in the general services division of the department.

(6) District engineer--The chief administrative officer in charge of a district of the department.

(7) Division--An organizational unit in the department's Austin headquarters.

(8) Executive director--The executive director of the department.

(9) Interested party--A vendor that has submitted a bid, proposal, or other expression of interest for the purchase involved.

(10) Purchase--A procurement action for commodities or non-professional services under the Act.

[(11) Rules--1 TAC §§113.1-113.87, the State Purchasing Rules.]

(c) Filing of protest.

(1) An actual or prospective bidder or offeror who is aggrieved in connection with the solicitation, evaluation, or award of a purchase may file a written protest. The protest must be addressed to the attention of the district engineer in whose district the action is being or was processed, or to the director of purchasing for purchases made on behalf of a division, but sent to the office of the director of general services. The protest must be received in the office of the director of general services within 10 working days after such aggrieved person knows, or should have known, of the action.

(2) The protest must be sworn and contain:

(A) the [statutory or regulatory] provision of or rule adopted under the Act [or the rules] that the action is alleged to have violated;

(B) a specific description of the alleged violation;

(C) a precise statement of the relevant facts;

(D) the issue to be resolved;

(E) argument and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) Suspension of award. If a protest or appeal of a protest has been filed, then the department will not proceed with the solicitation or the award of the purchase until the executive director or his or her designee, not below the level of division director, consults with the director of general services and the appropriate district engineer or the director of purchasing, and makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department.

(e) Informal resolution. The district engineer or the director of purchasing may informally resolve the dispute, including:

(1) soliciting written responses to the protest from other interested parties; and

(2) resolving the dispute by mutual agreement.

(f) Written determination. If the protest is not resolved by agreement, the district engineer or the director of purchasing will issue a written determination to the protesting party and interested parties which sets forth the reason of the determination. The district engineer or the director of purchasing may determine that:

(1) no violation has occurred; or

(2) a violation has occurred and it is necessary to take remedial action which may include [includes, but is not limited to]:

(A) declaring the purchase void;

(B) reversing the award; and

(C) re-advertising the purchase using revised specifications.

(g) Appeal.

(1) An interested party may appeal the determination to the executive director. The written [party must submit an] appeal must be received in [writing to] the executive director's office no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination.

(2) The appealing party must mail or deliver copies of the appeal to the determining district engineer or the director of purchasing and other interested parties with an affidavit that such copies have been provided.

(3) The general counsel shall review the protest, the determination, the appeal, and prepare a written opinion with recommendation to the executive director.

(4) The executive director may:

(A) issue a final written determination; or

(B) refer the matter to the commission for its consideration at a regularly scheduled open meeting.

(5) The commission may consider oral presentations and written documents presented by the department and interested parties. The chairman shall set the order and the amount of time allowed for presentation. The commission's determination of the appeal shall be adopted by minute order and reflected in the minutes of the meeting.

(6) The decision of the commission or executive director shall be final.

(h) Filing deadline. Unless the commission determines that the appealing party has demonstrated good cause for delay or that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(i) Document retention. The department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801213
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.38

The Texas Department of Transportation (department) proposes amendments to §9.38, Contract Management.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 924, 80th Legislature, 2007, amended Government Code, Chapter 2252, Subchapter Z, relating to rules and policies adopted by state agencies regarding engineering or architectural errors or omissions. The legislative amendments require that all state agency rules and policies that address errors and omissions contain certain specified provisions. Because the required provisions are more appropriate for a policy than for administrative rules, the department has adopted an internal policy docu-

ment that contains the required provisions. In addition, standard contract provisions adequately address errors and omissions recovery. Therefore, subsection (f), dealing with errors and omissions, is not necessary and is being deleted.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarification of the department errors and omissions policy and procedures. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.38 may be submitted to Mark Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on April 14, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §2252.904.

§9.38. Contract Management.

(a) DBE/HUB participation.

(1) HUB program goals may be satisfied by a HUB prime provider. DBE prime providers may receive DBE credit for work performed by its own forces or performed by a DBE subprovider, but not by a non-DBE subprovider.

(2) If the prime provider or the subprovider is a DBE/HUB, the DBE/HUB provider and subprovider may subcontract in accordance with §9.56 of this title (relating to Contract Compliance).

(b) Subcontracts. A prime provider shall perform at least 30% of the contracted work with its own work force unless approved by the director of the Design Division when the work is so specialized that the prime provider cannot perform at least 30% of the work.

(c) Operations.

(1) Management responsibility. The department's project manager will be designated by the managing officer.

(2) Project manager. The prime provider's project manager may not be changed without prior written consent of the department.

(3) Commencement of work. The provider shall not proceed with any contract work until advised in writing by the department to proceed.

(4) Suspension of work. The department may suspend the work by:

(A) verbally notifying the provider; and

(B) providing written notification of the suspension, including:

(i) identifying the reason for suspension; and

(ii) identifying approximate length of suspension and payment based on actual work completed as of the date of suspension.

(5) Payment on provider contracts. Payment for eligible costs will be made within 30 days after receiving a correct invoice. Payment may be withheld pending verification of satisfactory work performed. To receive payment for services, the provider shall submit to the department project manager:

(A) a monthly progress report;

(B) an itemized and certified invoice; and

(C) a DBE/HUB report (The CSTB may require proof of DBE/HUB use, including submittal of canceled checks that are properly identified by department project number or contract number).

(6) Interim audit. The department may perform interim audits.

(d) Supplemental agreements.

(1) The original executed contract will require a supplemental agreement if:

(A) additional funding is required in accordance with terms of the contract;

(B) additional time is needed to complete work in progress; or

(C) changes in scope of services are necessary.

(2) The supplemental agreement will be executed:

(A) prior to the expiration date of the original contract;

(B) prior to exceeding the contract amount; and

(C) prior to performance of unauthorized work.

(e) Indefinite deliverable contract work authorization. If the department and the provider are unable to execute a satisfactory work authorization containing a fair and reasonable price, the department project manager shall end negotiations with that provider. Only after negotiations have been ended will the department contact another provider with an indefinite deliverable contract to initiate negotiations for the work.

~~[(f) Errors and omissions, claims.]~~

~~[(1) Policy. It is the department's policy to require providers to correct errors or omissions in the providers' services which are required under the contract without undue delay and without additional cost to the department.]~~

~~[(2) Procedure.]~~

~~[(A) Claim by department.]~~

~~*[(i)* The department will notify the provider of errors and omissions.]~~

~~*[(ii)* The department will offer the provider an opportunity for informal resolution, and will attempt to resolve a claim informally.]~~

~~*[(iii)* If informal resolution fails, the department may file a claim against a provider in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.]~~

~~[(B) Claim by prime provider. The procedure concerning a claim by a prime provider and counter claim by the department is set out in §9.2 of this title (relating to Contract Claim Procedure).]~~

(f) [~~(g)~~] Contract close out.

(1) Final audit. The department's Audit Office may perform an audit.

(2) Time. A contract is ready for close out when:

(A) services have been provided;

(B) products have been received and accepted;

(C) approval has been received from the U.S. Department of Transportation, when federally funded;

(D) payments have been made;

(E) audit findings have been resolved;

(F) the contract expires unless extended by supplemental agreement; and

(G) the final DBE/HUB report has been submitted.

(g) [~~(h)~~] Provider performance evaluations.

(1) The department will document demonstrated competence and qualifications by evaluating the prime provider and project manager's performance.

(A) The evaluation shall be conducted annually at twelve month intervals during ongoing contract activity, upon completion of a contract, or when the managing office determines that the work is behind schedule or not being performed according to the contract.

(B) Optional evaluations may be conducted upon completion of a contract phase.

(2) The department may evaluate project constructability every 12 months during project construction and upon completion of the construction contract.

(3) The department will give a copy of the performance evaluation to the prime provider for review and comment. If the prime provider responds with comments on its evaluation, the department will include the comments in the CCIS database identified in §9.41 of this title (relating to Precertification).

(4) Performance evaluation scores will be entered into the CCIS database and may be used in determining the qualifications of the prime provider or subprovider in accordance with §9.35 (relating to Short List Meeting, Proposals, and Evaluation) or §9.36 (relating to Short List Interviews and Evaluation) of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801214

Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

43 TAC §§25.401, 25.405, 25.406, 25.408

The Texas Department of Transportation (department) proposes amendment to §25.401, Definitions; §25.405, Commercial Establishment Eligibility; §25.406, Major Shopping Area Eligibility; and §25.408, TOD Sign Program Operation, all concerning the Information Logo Sign and Tourist-Oriented Directional Sign Program.

EXPLANATION OF PROPOSED AMENDMENTS

Under Transportation Code, Chapter 391, the department is responsible for managing several sign programs designed to provide motorists with information. The programs are Specific Information Logo Signs (Logo), Major Shopping Area Guide Signs (MSAG), and Tourist-Oriented Directional Signs (TOD).

House Bill 3441, 80th Legislature, Regular Session, 2007, amended Transportation Code, §391.092 to authorize the Texas Transportation Commission (commission) to establish by rule what constitutes an eligible highway for location of Logo and MSAG signs. The statute requires that any rule adopted by the commission must be in accordance with federal law, regulations, and guidelines.

House Bill 3441 also removed the statutory definition of a major shopping area and authorized the department to determine by rule what type of retail establishment will qualify for a sign under the program. The rule must comply with federal regulations and guidelines for the sign program. The MSAG urban highway restriction was also removed from the statute allowing the department to authorize signs on any eligible highway.

The proposed amendments are designed to implement the provisions of House Bill 3441 as well as make other minor clarifications to the existing eligibility requirements.

Amendments to §25.401, Definitions, change the definition for the term "eligible highway" as used in relation to the Information Logo Sign Program. House Bill 3441 repealed the statutory definition for eligible highway allowing the commission to set the definition by rule. This amendment removes the restrictive language regarding population and a 65 mile per hour speed limit from the definition and will allow Logo signs on any controlled access highway. Federal guidelines require the use of the signs to be limited to areas where adequate sign spacing can be achieved. The department currently allows the placement of a Logo sign on a controlled access highway under the variance program. The amendment will streamline the department's operation by removing the need for a variance request procedure and review. Due to the current policy, the department does not anticipate an increase in the number of installed Logo signs.

Amendments to §25.405, Commercial Establishment Eligibility, clarify the requirements for participation in the Specific Information Logo Sign Program.

In §25.405(b)(2)(B) a requirement for a food establishment is that the food be prepared on site. The department has determined that this is too restrictive and does not reflect how some food establishments are currently operating. The department currently allows an exception to this requirement by variance. Because of the variance program, the department does not anticipate any increase in the total number of Logo signs installed under the program due to this amendment.

The requirements for eligibility for a lodging establishment under §25.405(b)(3)(B) are amended to clarify that the establishment must have 10 guest rooms with adequate sleeping accommodations. The current language only requires that the business have 10 rooms. This change will reinforce the need for participating lodging establishments to be of sufficient size and quality to accommodate the needs of the traveling public.

Amendments to §25.405(b)(4) add that camping sites have sanitary facilities for recreational vehicles to be eligible for a camping facility Logo sign. This change is needed to comply with the requirements of Transportation Code, §391.093(e)(3). The amendments also require the facility be able to accommodate all types of recreational vehicles, travel trailers, campers, and tents. This change clarifies that a Logo sign is only available to a camp facility that accommodates all types of camping.

Amendments to §25.406, Major Shopping Area Eligibility, change the criteria to qualify for a Major Shopping Area Guide sign. House Bill 3441 deleted the specific statutory definition of major shopping area; therefore, the commission can now establish new criteria to meet the recent trends in the development of retail facilities. When the program was originally implemented, enclosed shopping malls were the typical major shopping areas. However, today many shopping areas are smaller in total size, are not totally enclosed, and consist of separate buildings of a unified theme. The changes in §25.406(a) allow signs for these new types of major shopping areas. The amendments require that there be at least 10 retail establishments, with a combined building area of at least 650,000 square feet, located within close proximity to one another, and that there be at least two anchor stores that have a combined minimum of 150,000 square feet of building area. The amendments to §25.406(a) also require that the architectural design of the buildings must be consistent and that the retail establishments must be planned, developed, and managed as a single property. These requirements have been developed through the existing variance program. The department believes that these minimum requirements will ensure that the areas eligible for an MSAG sign are major shopping areas and not neighborhood retail centers. The department currently allows shopping areas meeting these minimum requirements to obtain an MSAG sign under the variance program. Incorporating this current practice into the program rules will allow the department to streamline our internal process to operate the program. Due to the current policy, the department does not anticipate that the change in the rule will increase the number of MSAG signs.

Section 25.406(a) is also amended to remove the term "urban" from the section to comply with the changes in House Bill 3441.

Amendments to §25.408, TOD Sign Program Operation, clarify the existing requirements for a participating commercial tourist-oriented enterprise. The amendment changes the language of §25.408(a)(2)(C)(i) so that an entity is required to provide, not produce, a service or product of interest to the tourist community. The language regarding the amount of time that the entity must be opened is changed to clarify that the entity must be open five days and that one of those five days must be either Saturday or Sunday. Section 25.408(a)(2)(C)(i) is also amended to replace the requirement that the entity be an independent enterprise with the requirement that it be a tourist destination or an accommodation to clarify that, to qualify for participation, the entity must be of interest to tourists.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local governments.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Lopez has also determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be more efficient operation of the Information Logo Sign and Tourist-Oriented Directional Sign programs. The amendments will also implement House Bill 3441, 80th Legislature. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §25.401, §25.405, §25.406, and §25.408 may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on April 14, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §391.092 and §391.0935, which provides the commission with the authority to establish rules regarding the Specific Information Logo Sign Program and Tourist-Oriented Directional Sign Program.

CROSS REFERENCE TO STATUTE

Transportation Code, §391.001 and Transportation Code, Chapter 391, Subchapter D.

§25.401. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Business logo--A separate sign panel of specified dimensions attached to a specific information logo sign assembly and containing the commercial establishment name, symbol, brand, trademark, or combination.

(2) Commercial establishment--A privately owned business or corporation offering one or more of the primary motorist services.

(3) Commission--The Texas Transportation Commission.

(4) Contractor--A person, firm, group, or association in the State of Texas that acts as the authorized agent of the department in the operation of the specific information logo or the tourist-oriented directional (TOD) sign program.

(5) Department--The Texas Department of Transportation.

(6) Driveway access--A vehicle entrance, built in compliance with state and local standards and regulations, for use by the public providing access from a public street or highway to a commercial establishment or major shopping area.

(7) Dual logo--A panel on a specific information logo sign containing the names of either:

(A) two food establishments in a shared space under common ownership; or

(B) a gas and food establishment in a shared space under common ownership.

(8) Eligible highway--

(A) for information logo signs, a controlled access highway on the designated state highway system; or [~~that is:~~]

~~*[(i)*~~ ~~located inside an urbanized area with a population of 50,000 or more; or]~~

~~*[(ii)*~~ ~~located outside an urbanized area with a population of 50,000 or more and was eligible for a 65 mile per hour speed limit on December 7, 1995; or]~~

(B) for TOD signs and participating facilities, a non-controlled access highway located on the designated state highway system outside the corporate limits of a municipality with a population of 5,000 or more.

(9) Executive director--The executive director of the Texas Department of Transportation or his or her designee.

(10) Gross building area--Square footage of usable area within a building, or series of buildings, that is considered usable by the retail businesses and the public.

(11) Information logo sign--A specific information logo sign assembly or a major shopping area guide sign.

(12) Interchange--The intersection of the centerlines of an eligible highway and a crossroad.

(13) Major portion--Fifty-one percent or more.

(14) Major shopping area guide sign--A rectangular supplemental sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

(15) Major shopping area ramp sign--A supplemental sign with the common name of the major shopping area, directional arrows, and/or distances placed near an eligible highway exit ramp or access road.

(16) Multiple crossroad interchange--An interchange in which one exit in a direction of travel from an eligible highway provides the only point of access for two or more crossroads; the center of a multiple crossroad interchange is the mid-point of the intersection of the centerline of the eligible highway and centerlines of the affected crossroads.

(17) Pharmacy services--The act of accepting and filling prescriptions by or under the supervision of a pharmacist licensed by the State of Texas.

(18) Primary motorist service--Gas, food, lodging, camping, or 24-hour pharmacy services available to the traveling public.

(19) Ramp business logo--A reduced size separate sign panel of specified dimensions attached to a ramp sign and containing the commercial establishment name, symbol, brand, trademark, or combination.

(20) Ramp sign--A supplemental sign with ramp business logos or the name of the major shopping area, directional arrows, and distances placed near an eligible highway or eligible highway exit ramp.

(21) Specific information logo sign assembly--A rectangular supplemental sign imprinted with the words "GAS," "FOOD," "LODGING," "CAMPING," or "24 HOUR Rx" or with a combination of those words, and the names (or business logos) of commercial establishments offering those services.

(22) State--the State of Texas.

(23) Texas MUTCD--Texas Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, issued by the Texas Department of Transportation.

(24) TOD sign assembly--An official sign structure erected under the TOD sign program containing one or more TOD panels and located on a TOD sign program eligible highway as defined in this subchapter.

(25) TOD sign panel--An individual sign panel of a business or entity participating in the TOD program contained on a TOD sign assembly.

(26) TOD sign program--Tourist-oriented directional sign program.

(27) Trailblazer sign--A sign used in conjunction with the TOD sign program off of the designated state highway system that indicates the direction to the participating business or entity.

§25.405. Commercial Establishment Eligibility.

(a) General requirements for specific information logo sign eligibility. To be eligible to have a business logo placed on a specific information logo sign, a commercial establishment must:

(1) offer at least one primary motorist service;

(2) be located with driveway access to the access road (frontage road), ramp, or intersecting crossroad;

(3) be visible, or have on-premise signing visible, from the commercial establishment's driveway access or the exit ramp, access road, crossroad, or intersection (or for an establishment that provides lodging, be visible from an eligible highway or an interchange on an eligible highway and be located on a street that is not more than two turns off the access or frontage road to the eligible highway); and

(4) be located not farther than three miles from an interchange on an eligible highway, but if no gas, food, lodging, or camping service participating or willing to participate in the specific information logo sign program is located within three miles of an interchange, the department may approve commercial establishments of the same service:

(A) if located not farther than six miles from the interchange;

(B) nine miles from the interchange if no service participating or willing to participate is located six miles from the interchange;

(C) 12 miles from the interchange if no service participating or willing to participate is located nine miles from the interchange; or

(D) 15 miles from the interchange if no service participating or willing to participate is located 12 miles from the interchange;

(5) comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin; and

(6) post its hours of operation on or near the main entrance so that they are visible to the public during open and closed hours.

(b) Specific services eligibility. In addition to the general requirements for eligibility to have a business logo placed on a specific information logo sign, a commercial establishment must meet the requirements for at least one of the following primary motorist services.

(1) Gas. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "GAS," a commercial establishment must provide:

(A) vehicle services, including fuel, oil, and water;

(B) restroom facilities and drinking water;

(C) continuous operation for at least 12 hours per day, seven days a week; and

(D) a telephone accessible to the public.

(2) Food. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "FOOD," a commercial establishment must provide:

(A) a license or other evidence of compliance with public health or sanitation laws, if required by law;

(B) continuous operation at least 10 hours a day to serve two meals a day [~~prepared on site~~], six days a week;

(C) seating capacity for at least 16 people;

(D) public restrooms; and

(E) a telephone accessible to the public.

(3) Lodging. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "LODGING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating facilities providing lodging, if required by law;

(B) a minimum of [~~at least~~] 10 guest rooms each of which provides sleeping accommodations; and

(C) a telephone accessible to the public.

(4) Camping. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "CAMPING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating camping facilities, if required by law;

(B) a facility that is accessible to and capable of accommodating all types of recreational vehicles, travel trailers, campers, and tents;

(C) [~~(B)~~] adequate parking accommodations; [~~and~~]

(D) [~~(C)~~] drinking water; and [~~.~~]

(E) modern sanitary facilities.

(5) Pharmacy. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "24 HOUR Rx," a commercial establishment must:

(A) be open for business 24 hours of each day; and

(B) provide pharmacy services 24 hours of each day.

(c) Multiple services eligibility. If a commercial establishment offers more than one primary motorist service, it will be eligible to display a business logo for each of those services on the appropriate specific information logo sign, provided that:

(1) minimum criteria for the service as described in §25.404 of this subchapter (relating to Specifications for Information Logo Signs) are met;

(2) the additional business logo(s) would not prevent participation by another eligible commercial establishment whose sole service would be displaced; and

(3) a business logo space is available.

(d) Variances.

(1) A person may request a variance from the information logo sign program. Requests for variances will only be considered if the existing requirements preclude participation in the program.

(2) A variance may be requested for a waiver of:

(A) an eligibility requirement except for the requirements listed in subsections (a)(1), (2) (except that an exception may be asked for an intersecting crossroad if the roadway with driveway access Tees into the frontage road of the eligible highway and is easily accessible or visible from that intersection), (5), and (6), and (b) of this section;

(B) location of the establishment;

(C) placement of the sign; or

(D) type of highway, except the highway must be on the state highway system and for logo signs at or near a grade-separated intersection.

(3) Variances may not be requested for restrictions regarding dual logos.

(4) A person may submit a request for a variance to the department's local district engineer indicating:

(A) which requirement of the program it does not meet; and

(B) the variance requested.

(5) The department may require additional documentation following generally accepted engineering standards, which may include, but not be limited to:

(A) traffic studies;

(B) maps indicating ramps, major arterials, ingress and egress points, existing signs and distances;

(C) traffic flow analysis including traffic counts to and from the commercial establishment or major shopping area;

(D) crash data and analysis; and

(E) detailed site plan of the commercial establishment or major shopping area, including but not limited to available parking, driveways, and location in reference to eligible highways.

(6) The executive director may grant a variance if he or she determines it is feasible to place the sign at the requested location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;

(B) the variance will substantially improve traffic flow;

(C) an overpass, highway sign or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating information needed by people to safely and efficiently use the transportation system.

(7) The executive director will indicate the reason for granting or denying a variance in writing.

§25.406. Major Shopping Area Eligibility.

(a) Eligibility criteria. To be eligible to have a major shopping area guide sign, the major shopping area must:

(1) consist of 10 or more retail commercial establishments [~~be a geographic area that~~]:

(A) that have a combined gross building area of 650,000 or more square feet; [~~consists of 30 acres or more of land; and~~]

(B) that are located within close proximity to one another [~~includes an enclosed retail shopping mall that contains 1 million square feet or more of gross building area~~];

(C) that have a unifying architectural design theme for the commercial establishments;

(D) at least two of which are anchor retail businesses, that have a combined gross building area of 150,000 or more square feet; and

(E) that are planned, developed, and managed as a single property;

(2) be located not farther than three miles from an interchange with an eligible [~~urban~~] highway; and

(3) be located with driveway access to the eligible [~~urban~~] highway access road (frontage road), ramp, intersecting crossroad or city street.

(b) Variances.

(1) A person may request a variance from the requirements of the major shopping area guide sign program. A request for a variance will only be considered if the existing requirements preclude participation in the program.

(2) A variance may be requested for waiver of the requirement of:

(A) eligibility;

(B) location of the major shopping area;

(C) placement of the sign; or

(D) type of highway, except the highway must be on the state highway system.

(3) A person may submit a request for a variance to the department's local district engineer indicating:

(A) which requirement of the program it does not meet; and

(B) the variance requested.

(4) The department may require additional documentation following generally accepted engineering standards, which shall include, but not be limited to:

(A) traffic studies;

(B) maps indicating ramps, major arterials, ingress and egress points, existing signs, and distances;

(C) traffic flow analysis including traffic counts to and from the major shopping area;

(D) crash data and analysis;

(E) detailed site plan of the major shopping area, including but not limited to available parking, driveways, and location in reference to eligible urban highways.

(5) The executive director may grant a variance if he or she determines it is feasible to place the sign at the location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;

(B) the variance will substantially improve traffic flow;

(C) an overpass, highway sign, or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating the information needed by people to safely and efficiently use the transportation system.

(6) The executive director will indicate the reason for granting or denying a variance in writing.

(7) A variance will not be granted if the executive director finds that:

(A) a major shopping area is located on an intersecting crossroad or city street whose name can be easily identified with the major shopping area and has existing advance and exit guide signs; or

(B) the major shopping area parking is so insufficient that it causes undue congestion of the roadway system.

§25.408. TOD Sign Program Operation.

(a) Eligibility. A facility eligible for a TOD sign panel is a winery or other business or non-profit entity including a farm, ranch or other tourist activity that meets the following requirements:

(1) General criteria. An eligible facility must:

(A) derive a major portion of its income or visitors during the normal business season from highway users not residing within 50 miles from the facility;

(B) provide a tourist-oriented service or tourist-oriented product of significant interest to the traveling public;

(C) comply with all state and federal laws relating to:

(i) provision of public accommodation without regard to race, religion, color, age, sex, or national origin; and

(ii) licensing and approval of service facilities; and

(D) be located within five driving miles from the eligible highway;

(E) provide modern restroom facilities and drinking water;

(F) be clean and in good repair; and

(G) be in compliance with provisions regarding illegal signs as defined in the Highway Beautification Act of 1965 (23 USC 131).

(2) Specific requirements. In addition to the general requirements, an eligible facility must meet the following specific requirements for at least one of the following categories of TOD sign panels.

(A) Wineries. To be eligible for a TOD sign panel a winery must:

(i) produce wine on the premises;

(ii) conduct regularly scheduled public tours of the grounds or facilities or provide such tours upon walk-up request;

(iii) market the product on the premises as a retail sale;

(iv) have a wine tasting area on the premises; and

(v) have a winery permit issued by the State of Texas.

(B) Agritourism.

(i) To be eligible for a TOD sign panel an agritourism applicant must:

(I) sow, cultivate, or produce an agricultural product on site;

(II) devote a minimum of five acres of land to the production of an agricultural product;

(III) conduct regularly scheduled public tours of the grounds or facilities or provides such tours upon walk-up request;

(IV) market the product on the premises as a retail sale; and

(V) be open twelve months a year or during the normal seasonal period.

(ii) Examples of eligible agritourism businesses include, but are not limited to, farms, ranches, nurseries, greenhouses, herb farms, wildflower farms, and farmers markets.

(C) Other commercial tourist-oriented businesses or entities.

(i) To be eligible for a TOD sign panel, an eligible commercial tourist-oriented applicant must:

(I) provide [~~produce~~] a unique or unusual commercial or non-profit service or product of significant interest to the tourist community;

(II) be open for business at least five days a week, and one of the five days must be Saturday or Sunday [~~that includes being open on Saturday and/or Sunday~~]; and

(III) be a tourist destination or an accommodation [~~an independent enterprise~~] that is not part of a franchise or national chain.

(ii) Examples of eligible commercial tourist-oriented businesses include, but are not limited to, art/craft centers, art galleries, auction houses, amphitheaters, amusement parks, antique businesses, aquariums, arboretums, arenas, auditoriums, bed and breakfasts, boat landings/marinas, civic centers, concert halls, equestrian centers, fairgrounds, golf courses, museums, natural attractions, pavilions, stadiums, water oriented businesses, and wildlife preserves.

(3) Ineligible facilities. Facilities excluded from participation in the TOD sign program include, but are not limited to, adult entertainment facilities, animal shelters, cemeteries, convenience stores, funeral homes, gas stations, industrial parks or plants, media facilities, local jails, local police or sheriffs' offices, movie theaters, office parks, radio stations, television stations, truck terminals, post offices, medical facilities, retirement homes, veterans facilities, veterinary facilities, mobile home parks, and residential or commercial subdivisions.

(4) Final determination of eligibility. The department will make all final determinations regarding an applicant's eligibility to participate in the TOD sign program.

(b) Application.

(1) Applications for eligible facilities desiring to participate in the TOD sign program are available upon request from the department.

(2) An eligible facility desiring to participate in the TOD sign program must submit an application to the contractor and verify that all eligibility requirements are met. Applications must be submitted to the location stated on the application form. The contractor will verify the eligibility of each applicant.

(3) Applications will be reviewed by the contractor and applicants will be notified in writing of the application being approved or disapproved according to the following schedule.

(A) Within 30 days the contractor will notify the business that:

(i) the application has been received; and

(ii) that the application is complete, or that additional information is required to complete the application.

(B) The contractor will approve or disapprove the application:

(i) within 60 days after the business submits the application if no additional information is required; or

(ii) within 30 days after the date the business submits all of the additional information requested by the contractor under subparagraph (A) of this paragraph.

(c) Specifications for TOD sign assemblies and sign panels.

(1) Sign assembly. A TOD sign assembly shall:

(A) have a blue background with a white reflective border;

(B) meet all applicable provisions of the MUTCD;

(C) have background material which conforms with department specifications for reflective sheeting; and

(D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Order of priority. TOD sign panels will be assigned to eligible facilities in the following priority: wineries, agritourism, and other commercial tourist-oriented businesses.

(3) Content. A TOD sign panel will contain no more than the following items as space limitations will allow:

(A) a maximum of two lines of text describing the name of the eligible facility;

(B) a directional arrow indicating the direction of and distance to the eligible facility; or

(C) a symbol or icon depicting the type of eligible facility as designed and approved by the department.

(4) Panel limitations. Each TOD sign assembly may have no more than three TOD sign panels.

(5) Placement. Subject to approval by the department, a TOD sign assembly shall be installed or placed:

(A) only on TOD eligible highways as defined in this subchapter;

(B) to take advantage of natural terrain;

(C) to have the least impact on the scenic environment;

(D) to avoid visual conflict with other signs within the highway right-of-way;

(E) with a lateral offset equal to or greater than existing guide signs;

(F) in advance of the intersection or business entrance on the TOD eligible highway;

(G) at least 200 feet from any other traffic control devices; and

(H) so that it does not block motorists' visibility of existing traffic control and guide signs.

(6) Maximum number of TOD sign assemblies. The maximum number of TOD sign assemblies will be limited to three per intersection approach subject to the placement requirements contained in this subchapter.

(7) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate TOD signs.

(d) TOD trailblazer signs.

(1) At each turn required to be made by the traveling public from a TOD sign to the participating facility, a TOD trailblazer sign shall be in place directing the turn.

(2) Any costs associated with installation and maintenance of trailblazer signs is the responsibility of the participating facility and is not part of the TOD contract between the department and contractor.

(3) No TOD sign will be installed until all necessary trailblazer signs have been installed by the participating facility.

(4) When trailblazer signs are required to be installed off the state highway system, it will be the participating facility's responsibility to contact the private property owner or appropriate local jurisdiction for approval to install these signs.

(5) If at any time the department determines that trailblazer signing off the state highway system is not adequate to direct the motorist, the participating facility shall be notified. If action is not taken by the participating facility to correct this problem within 60 days, the TOD sign panel on the state highway system shall be removed or covered at the discretion of the department.

(e) TOD sign panel order. Order of placement of TOD sign panels will be determined by the department so as to maximize the number of participating businesses.

(f) Removal of TOD sign panel.

(1) A TOD sign panel of an eligible facility shall be removed by the contractor if the facility:

(A) ceases to exist;

(B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified in the agreement;

(C) does not meet the minimum requirements as stated in subsection (a) of this section, and all corrections are not made within 30 calendar days of written notification;

(D) is sold, and the new eligible facility does not continue the original tourist-oriented activity or service, or does not meet the minimum requirements for a TODS eligible facility; or

(E) relocates and is no longer eligible for participation in the program.

(2) If the TOD sign panel is removed due to the default of the eligible facility to perform within the terms of the participation agreement and this subchapter, the participation agreement is terminated between the eligible facility and the contractor. All funds paid to the contractor by the eligible facility are forfeited. Upon removal of a TOD sign panel, the vacated space becomes available pursuant to the procedures contained in this subchapter.

(3) If the TOD sign panel is removed permanently due to actions of the department, the participation agreement is terminated between the eligible facility and the contractor. Advance funds paid to the contractor by the eligible facility will be pro-rated as per the date of removal, and any remaining amounts refunded to the commercial establishment.

(g) Seasonal facilities. Seasonal facilities may participate in the TOD sign program provided they meet the general eligibility criteria for participation in the program.

(h) Existing winery signs. Wineries that currently have signs maintained by the department will be eligible to participate in the TOD sign program.

(i) Variances. Variances may not be requested for any eligibility requirements for TOD sign panels as described in this section.

(j) Allocation process for excess demand. The contractor will hold a public drawing to assign TOD sign panel spaces when there are more eligible facilities wishing to participate in the program than TOD panel spaces available at a given location.

(1) To be eligible for the selection process for the available TOD space(s), an eligible facility must have submitted a qualified application before the TOD sign program application deadline.

(2) The application deadline for the initial installation for a new or existing TOD sign assembly drawing will be set at a date specified by the contractor and approved by the department.

(3) Qualified applications received after the deadline will be placed on file and considered eligible for future drawings.

(4) Selection.

(A) Available TOD sign panel space(s) on the specific TOD sign assembly will be awarded by drawing of the qualified applications received before the application deadline.

(B) Spaces will be awarded based on the following priority: wineries, agritourism and other commercial tourist-oriented businesses.

(C) The drawing will be held publicly by the contractor at a date specified by the contractor and approved by the department in the presence of two or more department employees. When additional TOD sign panel spaces become available, additional drawings will be held as needed at a date specified by the contractor and approved by the department.

(D) The contractor shall notify applicants by certified mail of the award of the TOD sign panel space within 10 calendar days of the date of the award. To accept the award, the applicant must execute a written participation agreement with the contractor within 30 calendar days of the date of the award. The participation agreement shall be in a form as prescribed by the department and shall, at a minimum, contain all applicable provisions prescribed in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801215
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 13, 2008
For further information, please call: (512) 463-8683

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.61

Proposed amended §81.61, published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5537), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801259

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCAA, §112, 40 CFR PART 63)

30 TAC §113.1130

Proposed new §113.1130, published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5296), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801138

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.13, §20.29

The Texas Ethics Commission adopts amendments to §20.13 and §20.29, relating to the reporting of information from out-of-state political committees. The amendments are adopted without changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 12) and will not be republished.

Current §20.13(d) prompts a filer to look at §22.7 (Contribution from Out-Of-State Committee) for additional reporting requirements regarding the acceptance of a contribution from an out-of-state political committee. The amendment prompts the filer to also look at §20.29 (Information About Out-of-State Committees), which contains additional reporting requirements regarding these types of contributions.

Current §20.29(c) provides that the timeliness of paper documents concerning out-of-state political committees is governed by the postmark rule of Election Code §251.007. The amendment provides that the timeliness of these documents is governed by the filing deadline applicable to a report for which a document is filed. In other words, a document submitted concerning a pre-election report would be required to be received by the commission by the applicable deadline for that report. Effective September 1, 2007, a report due 30 days before an election and a report due 8 days before an election (including a runoff election) must be received by the filing authority no later than the report due date.

No comments were received regarding the proposed rules during the comment period.

The amendments to §20.13 and §20.29 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801133

Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: March 17, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §20.220

The Texas Ethics Commission adopts new §20.220, relating to additional disclosure requirements for the Texas Comptroller of Public Accounts. The new rule is adopted with changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 13) and will be republished.

Section 20.220 addresses the requirement in House Bill 3560, 80th Legislature, that the Texas Comptroller of Public Accounts disclose to the Texas Ethics Commission a contribution from a vendor.

Section 20.220 addresses §2155.003(e) of the Government Code requiring the Texas Comptroller of Public Accounts (comptroller) to report to the Texas Ethics Commission a campaign contribution from a vendor that bids on or receives a contract under the comptroller's purchasing authority.

Subsection (a) of the rule defines the term "vendor."

Subsection (b) provides that the comptroller, or specific-purpose committee created to support the comptroller, is required to disclose campaign contributions of $500 or more from a vendor during the reporting period or from a political committee directly established, administered or controlled by a vendor during the reporting period. The comptroller or specific-purpose committee created to support the comptroller, must also report certain other required information.

Subsection (c) provides a "best efforts" defense to the comptroller, or specific-purpose committee created to support the comptroller, providing that the comptroller or specific-purpose committee request the information required by subsection (b) in writing, or if not in writing, orally with certain additional requirements.

Subsection (d) provides that the comptroller, or specific-purpose committee created to support the comptroller, report certain additional information that is not provided by the person making the political contribution and that is in the comptroller's or committee's records or previous campaign finance reports filed by the comptroller or committee.

Subsection (e) provides that the comptroller, or specific-purpose committee created to support the comptroller, report certain additional information received after the filing deadline on the next required report.

Subsection (f) provides that the disclosure under subsection (b) applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

Section 20.220 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The following comments were received from Mr. Edward Shack, Attorney, regarding the adoption of the rule. He requested that the commission amend proposed §20.220(a). He stated that the definition of "vendor" was defined too broadly and should include "the corporate PAC, officers and directors". The commission considers comments from all parties but was satisfied with §20.220(a) as proposed. No changes were made as a result of this comment. Mr. Shack also requested that §20.220(d) should be deleted because it is confusing. "The section could be interpreted as to require state employees to compare vendor lists with campaign contributor lists . . . Even the suggestion of political activity occurring in a state office building is unwise." The commission considered Mr. Shack's comment and revised §20.220(d) to clarify that vendor information be reported only from campaign finance reports required to be filed under Title 15 of the Election Code.

The new §20.220 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§20.220. Additional Disclosure for the Texas Comptroller of Public Accounts.

(a) For purposes of this section and §2155.003(e) of the Government Code, the term "vendor" means:

(1) a person, who during the comptroller's term of office, bids on or receives a contract under the comptroller's purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code; and

(2) an employee or agent of a person described by subsection (a)(1) of this section who communicates directly with the chief clerk, or an employee of the Texas Comptroller of Public Accounts who exercises discretion in connection with the vendor's bid or contract, about a bid or contract.

(b) Each report filed by the comptroller or a specific-purpose committee created to support the comptroller, shall include:

(1) for each vendor whose aggregate campaign contributions equal or exceed $500 during the reporting period, a notation that:

(A) the contributor was a vendor during the reporting period or during the 12 month period preceding the last day covered by the report; and

(B) if the vendor is an individual, includes the name of the entity that employs or that is represented by the individual; and

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed $500 during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12 month period preceding the last day covered by the report.

(c) The comptroller, or a specific-purpose committee created to support the comptroller, is considered to be in compliance with this section if :

(1) each written solicitation for a campaign contribution includes a request for the information required by subsection (b) of this section; and

(2) for each contribution that is accepted for which the information required by this section is not provided at least one oral or written request is made for the missing information. A request under this subsection:

(A) must be made not later than the 30th day after the date the contribution is received;

(B) must include a clear and conspicuous statement requesting the information required by subsection (b) of this section;

(C) if made orally, must be documented in writing; and

(D) may not be made in conjunction with a solicitation for an additional campaign contribution.

(d) The comptroller, or a specific-purpose committee created to support the comptroller, must report the information required by subsection (b) of this section that is not provided by the person making the political contribution and that is in the comptroller's or committee's records of political contributions or previous campaign finance reports required to be filed under Title 15 of the Election Code filed by the comptroller or committee.

(e) If the comptroller, or a specific-purpose committee created to support the comptroller, receives the information required by this section after the filing deadline for the report on which the contribution is reported the comptroller or committee must include the missing information on the next required campaign finance report.

(f) The disclosure required under subsection (b) of this section applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801134
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: March 17, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-5800

SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §20.435

The Texas Ethics Commission adopts the amendment to §20.435, relating to special pre-election reports. The amendment is adopted without changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8395) and will not be republished.

The amendment to §20.435 changes the name of the report from "telegram report" to "special pre-election report." House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election." By rule, the commission has proposed as a shorthand name for this report the term "special pre-election report." This amendment also reflects statutory changes made to §254.039 of the Election Code which requires a general-purpose committee to file a special pre-election report if it accepts political contributions from a person that in the aggregate exceed $5,000 during the reporting period. The rule also clarifies that the committee is required to file a special pre-election report only if it is involved in the election.

No comments were received regarding the proposed rule during the comment period.

The amendment to §20.435 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801135
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: March 17, 2008
Proposal publication date: November 23, 2007
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER L. URBAN SCHOOLS GRANTS PROGRAM

4 TAC §§1.800, 1.802, 1.803

The Texas Department of Agriculture (the department) adopts amendments to Chapter 1, Subchapter L, concerning the department's Urban Schools Grants Program, without changes to the proposal published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 461).

The amendments to §§1.800, 1.802 and 1.803 add middle schools to the type of public schools eligible for grants under the program to make the rules consistent with amendments made to Texas Agriculture Code, Chapter 48, the statutory authority for the program, by Senate Bill 827, 80th Regular Session, 2007.

No comments were received on the proposal.

The amendments to §§1.800, 1.802 and 1.803 are adopted under the Texas Agriculture Code, §48.001, which authorizes the department by rule to develop a program to award grants to public elementary and middle schools located in large urban school districts for the purpose of establishing demonstration agricultural projects or other projects designed foster an understanding and awareness of agriculture.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 27, 2008.

TRD-200801173
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: March 18, 2008
Proposal publication date: January 18, 2008
For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS
SUBCHAPTER D. ERADICATION OF BRUCELLOSIS IN CERVIDAE

4 TAC §35.82

The Texas Animal Health Commission ("TAHC" or "Commission") adopts amendments to Chapter 35, Subchapter D, §35.82, concerning the Eradication of Brucellosis in Cervidae, without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9201) and will not be republished.

Section 35.82 contains requirements for certified brucellosis free cervidae herds and establishes the procedures and standards in order to make this determination.

The regulations describe general requirements for the collection and submission of blood samples to approved laboratories for testing, recognition of official tests, and the interpretation standards for official tests which are necessary to recognize herds which have voluntarily conducted whole herd testing in order to achieve Certified Brucellosis Free Cervidae Herd status. Herds which have achieved this status have distinct advantages in the marketability and interstate movement of animals. The current state requirements provide that for recertification of herd status, retests be conducted 33 to 39 months from the anniversary date.

These requirements were recently implemented by the Commission. That proposal to amend the regulations was published for comment in the February 23, 2007, issue of the *Texas Register* (32 TexReg 687). The amendment for recertification of herd status, extended the herd status from 24 months to 36 months, with the recertification test being required 33 - 39 months from the anniversary.

However, the new regulation did not clearly specify that the recertification test be conducted within each 33 - 39 month period from the anniversary date of the original certification test. In other words, the recertification test must be conducted within three months before or three months after each three year anniversary of the original certification test. The purpose of this proposed amendment is to more clearly define to program participants the correct timeframe within which the recertification test must be performed. Additionally, the regulation is amended in order to provide that only two (2) consecutive annual tests will be required for initial certification, instead of the current standard of three (3) tests as stated in the regulation.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §161.054 authorizes the commission to regulate, by rule, the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state. Section 163.061 authorizes the commission to adopt rules for Brucellosis control.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2008.

TRD-200801132
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 17, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 719-0714

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER L. NUCLEAR DECOMMISSIONING

16 TAC §25.304

The Public Utility Commission of Texas (commission) adopts new §25.304, relating to the funding of Nuclear Decommissioning funding and requirements for Power Generation Companies (PGCs), with changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 36). The new rule implements the requirements of §39.206 of the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated (Vernon 2007), as added by the 80th Texas Legislature. The new rule establishes the minimum financial assurance standard for PGCs constructing nuclear generation power plants as well as the funding, administration, and monitoring requirements for nuclear decommissioning trust funds. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 34888 is assigned to this proceeding.

The commission received comments on the proposed new rule from Exelon Generation (Exelon), Luminant Energy Company LLC (Luminant), NRG Texas LLC (NRG), the Steering Committee of Cities served by Oncor (Cities), and Texas Industrial Energy Customers (TIEC). The commission received reply comments from Cities, Exelon, NRG and TIEC.

§25.304(a) Purpose

TIEC observed that the rule assumes that the PGC eligible to establish a decommissioning trust is the holder of the license granted by the Nuclear Regulatory Commission (NRC). TIEC stated that although this is implied in the rule, this should be explicit. Accordingly, TIEC suggested that subsection (a) of the proposed rule be revised.

Commission response

The commission agrees with TIEC and has added the suggested language to the rule.

§25.304(b) Applicability and (c) Definitions

Exelon commented that the term "under construction" is not defined in subsection (b) and the term could be subject to misinterpretation. Therefore, Exelon recommended that a definition of the term be added as §25.304(c)(5), which defines the term consistent with the definition of "Commencement of Construction" used by the Department of Energy for the Standby Support Program. Exelon advised that a similar definition has been adopted by the Department of Treasury in its initial rules for production tax credits applicable to new nuclear plants.

NRG commented that the definition of "external sinking fund" in subsection (c) should be deleted as a stand-alone definition and that the substance of the definition be incorporated into the definition of "PGC decommissioning trust." NRG stated the term external sinking fund is used only once in the rule, which is in the definition of PGC decommissioning trust; therefore, it is unnecessary to include a separate definition.

Commission response

The commission agrees with Exelon's proposal to add clarity to the rule and NRG's proposal to incorporate the definition of external sinking fund into the definition of "PGC decommissioning trust," and has made the suggested changes.

§25.304(e) Commission Review

Cities advised that subsection (e) does not clearly provide for participation by any party, aside from commission staff and the PGC, in reviewing a PGC's application for setting annual decommissioning funding and for approving financial agreements to implement trust requirements. Cities stated that while the rule does provide that a request for hearing may be made, it does not provide that interested parties can participate in that hearing.

Exelon commented that the expense and delay of a formal hearing is unnecessary and ill-suited to the types of findings that are to be made by the commission and commission staff when reviewing an application to set the annual amounts to be funded in the decommissioning trusts. Moreover, Exelon

advised, the rule includes prescriptive requirements that already provide for adequate assurance of decommissioning funding. Exelon commented that unlike the procedures applicable to existing nuclear plants in Texas (where decommissioning funds are collected from retail customers), the annual contributions to be made under the proposed rule will be funded by the PGCs. Thus, any person or entity that has a remote interest in the adequacy of the amount of annual funding to be made by the PGCs can meaningfully express those concerns in written comments that can be considered by the commission and commission staff. Exelon recommended that the rule be revised to provide for the opportunity to submit comments with respect to any initial or periodic application filed to establish the annual decommissioning funding amount and the state assurance obligation. Exelon stated that the opportunity for hearing should be provided for in the remote circumstance where collections from retail electric customers may be ordered to provide funding for decommissioning.

TIEC provided two suggestions. First, TIEC suggested that a notice provision should be added so that interested parties are apprised of these filings. Second, TIEC suggested that subsection (e)(5) be deleted because administrative approval of applications is reserved for those types of cases that are routine and do not require commission-level scrutiny. TIEC commented that the importance of the issues and the magnitude of dollars involved in these proceedings merit a review by the commission, even if they are ultimately unopposed.

NRG commented that the language in subsection (e)(1) should be changed from "will endeavor to" to "will" because such a change would provide the certainty of an absolute date and would be consistent with the similar, existing provisions in §25.303(d)(6)(E) and §25.303(g)(3). Also, NRG stated that an unqualified request for a hearing, as set out in subsection (e)(2), is unnecessary given the nature of the decommissioning fund requirements and the commission staff's active participation. NRG advised that no hearing is required by statute for approval of a decommissioning fund, and the issues associated with this type of application are not suited for resolution through a contested evidentiary proceeding. NRG maintained that the rule sets out clear, non-discretionary requirements that must be satisfied and provides a mechanism for review by commission staff to ensure that the requirements are met as a condition of maintaining a decommissioning fund. Moreover, NRG stated, commission staff must affirmatively approve an application before it is presented to the commission for final approval (unless the applicant demonstrates its entitlement to approval through a contested case hearing). Rather than soliciting requests for hearing in subsection (e)(2), NRG recommended that the commission acknowledge that comments may be filed and require that commission staff respond to comments in its recommendation to the commission.

In their reply comments, TIEC and Cities disagreed with the suggested revisions proposed by Exelon and NRG because they would inappropriately limit customers' ability to participate in the proceedings to establish and review a decommissioning trust fund. TIEC advised that, aside from being contrary to administrative law, the proposal made by NRG and Exelon is bad public policy that would result in an initial "fast-track" review of the establishment of billions of dollars of potential liability of customers, and the subsequent review of funds, without providing customers the ability to test the evidence upon which an application is based. TIEC stated that if customers will ultimately be responsible for funding any shortfall of a decommissioning fund, they must be allowed to fully participate in the proceedings that establish and review the fund.

Commission response

In response to Cities' comments about interested parties and TIEC's comments about notice to interested parties, the commission declines to make any changes to the rule. Notice and standing to intervene are addressed by the commission's procedural rules and therefore need not be addressed in this rule. The commission also does not agree with Exelon's and NRG's request to limit or eliminate the right to a hearing. The commission agrees with the reply comments of TIEC and Cities, because the collection of funds and the subsequent maintenance and disposition of the decommissioning obligation could have a significant financial impact on customers.

The commission declines to delete subsection (e)(5), as proposed by TIEC. TIEC appears to be concerned with the possibility that an application could be approved by a presiding officer pursuant to §22.35(b)(1) of this title rather than by the commissioners. However, §22.35 and §25.304 contain a number of safeguards to ensure that applications filed pursuant to §25.304 are adequately scrutinized and, if necessary, approved by the commissioners, while avoiding unnecessary delays and burdens.

The commission disagrees with NRG that a strict 120-day deadline is warranted. The substantive rule that NRG cites allows a 120-day period for review of an applicant's decommissioning collection and fund agreements filed pursuant to §25.303(d)(1)(A) or (d)(3), and a separate 120-day period to review the annual decommissioning funding amount and trust fund balances. The rule in this project requires the commission to review and approve both the decommissioning funding agreements and the annual funding amount. Given the magnitude of the dollars involved and the importance of the decommissioning trusts being properly funded, it is vital that adequate time be given to carefully review an applicant's information without imposing a strict time limit on the review process.

§25.304(g) Annual Reports

TIEC commented that subsection (g) of the proposed rule requires a PGC to file an annual report outlining the status of the trust, any changes in the administration of the trust, and an update of the PGC's ability to fund the trust. TIEC suggested that this information does not allow the commission to appropriately evaluate the creditworthiness of a PGC (or its guarantor, if applicable) and that the use of audited financial statements and Securities and Exchange Commission (SEC) filings will provide the commission additional assistance in the credit review process, supplementing the credit rating agencies' assessments. TIEC also suggested that non-publicly held companies should provide audited financial information, credit references and other indicia of their ability to make payments in a timely manner. In its reply comments, NRG stated that the annual reporting suggested by TIEC is unnecessarily broad and would produce irrelevant information in many situations.

Commission response

The commission will address what additional information must be included in the annual report when it adopts the form for the annual report. The commission has amended subsection (g) to make it clear that the information that must be included in the annual report is not limited to the information specifically identified in subsection (g).

§25.304(h) Periodic Commission Review

TIEC suggested that there is a deficiency with the proposed rule because the review established in subsection (h) does not provide for an annual review of the PGC's creditworthiness and any guarantor identified by the PGC. TIEC argued that such review was necessary to ascertain that the appropriate collateral is in place and that the PGC and any guarantor are able to fulfill their obligations to the decommissioning fund. TIEC also requested the rule be strengthened to require a submission by the PGC in the event of an unusual credit occurrence during the time between annual reports. TIEC stated that the PGC must be obligated to report any credit downgrades or changes in its financial condition that may impact its credit standing. TIEC also advised that the rule should provide for an interim review triggered by certain credit events.

In its reply comments, Cities voiced its support for TIEC's proposal to enhance the oversight of a PGC's financial condition through the reporting process.

Exelon, in its reply comments, stated that TIEC's suggestion that there is a need for exhaustive and burdensome annual reviews and "triggers" in the event of any drop in the credit quality of a PGC misses the point that a PGC is not be expected to have high credit quality. Exelon replied that the submission of multiple annual reports to the commission is duplicative and unnecessary because by definition the types of reports suggested by TIEC are already filed with the SEC or Federal Energy Regulatory Commission (FERC), and as such they are already publicly available. Exelon stated that making annual payments to the decommissioning trust fund is a condition for operating the plant, and there is every expectation that even a bankrupt PGC would continue to make such annual payments. Thus, Exelon advised, TIEC' s implication that customers are more at risk or more likely to be harmed based upon the overall financial success of the project is incorrect because customers would only be called upon to fund decommissioning if the nuclear plant is unable to generate revenue from the production of electricity, and this risk does not correlate with the PGCs financial condition.

NRG replied that TIEC's suggested annual review of PGC creditworthiness is also unnecessary because it would do nothing more than create additional expense for the PGC without providing the commission with useful information and that the information sought by TIEC is not germane to the trust funding or financial assurance methods at issue. As part of the annual reporting process, commission staff will include appropriate reporting requirements to ensure compliance.

Commission response

The commission will address what information must be included in the annual report when it adopts the form for the annual report. As discussed more fully below, the commission does not agree that the creditworthiness collateral mechanism and investment grade standard TIEC has proposed, and Cities' has supported, are appropriate standards to measure and enforce a PGC's creditworthiness for the purpose of PURA §39.206(k)(5) so it has not incorporated TIEC's suggested reporting language in the rule. The commission agrees with TIEC that a PGC should be obligated to report any changes in its financial condition but only to the extent that changes may impact its ability to meet the state assurance obligation; however, this information should be reported under subsection (k). The commission also agrees with TIEC that upon the occurrence of financial events affecting a PGC's ability to meet the state assurance obligation, the rule should provide an opportunity for the commission to conduct a review of the financial condition of a PGC and has added the appropriate language to subsection (k) of the rule. The commission disagrees with Exelon that a PGC's financial condition does not have an impact on its ability to meet the state assurance obligation and would not affect customers. The commission believes it is important to monitor a PGC's ability to meet the state assurance obligation. Accordingly, the commission has revised the rule to enhance its ability to monitor the PGC's financial condition.

§25.304(i) Annual Decommissioning Funding Amount

TIEC suggested that other interested parties should be allowed to request the initiation of a proceeding to examine either the trust balances or the annual funding amounts because those serving as the ultimate guarantors (*i.e.*, customers) have a substantial interest in the fund balance and the amount of the contributions.

NRG, in its reply comments, stated that such a provision is unnecessary and will disrupt the administrative process the rule sets in place. NRG advised that all interested parties have the right, at any time, to suggest to the commission or commission staff that decommissioning funding issues should be reviewed, but such parties should not have the power to force a review when neither the commission nor commission staff believes that such review is warranted.

Commission response

While customers may serve as the ultimate guarantors of decommissioning funding, the commission disagrees with TIEC's suggestion that customers should be explicitly allowed to initiate a review of the trust balances. The commission believes that if any interested parties have issues with a PGC's trust balances or funding amounts they can petition the commission for a review of the status of the trust. At that point, the commission could decide to proceed with a formal proceeding relating to the status of the trust, investigate its status by informal means, or take no further action. Therefore, the commission believes that TIEC's suggested change is unnecessary and has not incorporated it.

§25.304(j) Creditworthiness of PGC

TIEC commented that combining the creditworthiness standards and the state assurance obligation is inappropriate under the statute and that separate creditworthiness standards must be established in the rule. TIEC opined that the creditworthiness standard outlined in PURA §39.206(k)(5) must be evaluated separate and apart from the 16-year state assurance obligation found in PURA §39.206(1). TIEC advised that key to this distinction is the use of the word "before" in §39.206(k)(5). Thus, "before" a PGC can be eligible to establish a nuclear decommissioning trust, it must meet minimum creditworthiness standards. TIEC stated that once a PGC is determined to be creditworthy, it must then provide financial assurances that it can satisfy 16 years of annual decommissioning funding pursuant to §39.206(1). TIEC offered that the appropriate minimum standard should be an investment grade rating from one of the major rating agencies (such as Fitch, Standard & Poor's, or Moody's). TIEC stated that this eligibility standard satisfies the statutory mandate that the commission adopt up-front credit standards that restrict access to the rule's mechanisms to only those PGCs that have the financial ability to minimize the funding risk to customers. Moreover, TIEC advised, having an investment grade credit rating makes some of the options provided under §39.206(1) more reasonable.

In its reply comments, Cities voiced support for TIEC's position on the establishment of a minimum creditworthiness standard for PGCs based on an investment grade credit rating.

Exelon, in its reply comments, stated that TIEC's interpretation of PURA §39.206(k)(5) as requiring exhaustive creditworthiness standards and periodic reviews by the commission ignores the plain language of PURA §39.206(1) which states that the very existence of the 16-year state assurance obligation under the proposed rule is "for purposes of Subsection (k)." Exelon commented that this language reflects the legislative compromise that was reached, *i.e.*, that a form of financial assurance in an amount to cover "16 years of annual decommissioning funding" would satisfy any concerns regarding the creditworthiness of a PGC. Moreover, Exelon offered, the mandate in §39.206(1) that "risk factors and creditworthiness attributes" be considered in establishing the "acceptable forms of assurance" confirms the statutory intent that the provisions of §39.206(1) be the means of implementing the requirements of §39.206(k)(5). Similarly, Exelon advised in its reply comments that the investment-grade credit rating standards proposed by TIEC are contrary to the purpose of the legislation, which was to provide alternative means of providing for decommissioning funding assurance by PGCs that are not large, traditional vertically integrated utilities with investment grade credit ratings.

In its reply comments, NRG echoed Exelon's position. NRG advised that TIEC's interpretation of §39.206(k)(5) as requiring exhaustive creditworthiness standards and periodic reviews by the commission in addition to meeting the state assurance obligation is in direct conflict with the plain language of §39.206(1) which states that the existence of the 16-year financial assurance requirement (the state assurance obligation) under the proposed rules is "for purposes of subsection (k)," *i.e.*, demonstrating creditworthiness. NRG argued that this language reflects the legislative direction that the financial assurance in an amount to cover "16 years of annual decommissioning funding" is the test to be used to satisfy any concerns regarding the creditworthiness of a PGC. Furthermore, NRG commented, the mandate to rely upon the state assurance obligation is reflected in §39.206(1) directing that "risk factors and creditworthiness attributes" be considered in establishing the "acceptable forms of assurance" further confirming the statutory intent that the provisions of §39.206(1) be the only means of implementing the reference to creditworthiness in §39.206(k)(5).

NRG also replied that in TIEC's initial comments it proposed to limit application of the entire rule to only PGCs with an investment-grade credit rating. NRG said it believes that no nuclear-PGC operating in Texas will have an investment grade credit rating, because these PGCs will likely be project-specific operating companies. NRG offered that the legislation enabling this rule was developed to provide an alternative means of providing for decommissioning funding assurance by PGCs, which are not large, traditional vertically integrated utilities that could be expected to have investment grade credit ratings and most will likely not have such entities as corporate parents. NRG opined that under TIEC's proposal PGCs in the Electric Reliability Council of Texas (ERCOT) would be able to satisfy the NRC's decommissioning requirements only by pre-funding all estimated decommissioning costs at the time of license issuance. This would be an enormous upfront burden of equity capital and effectively eliminate this program.

NRG replied that the fact that the PGC might not have investment-grade credit was fully recognized when the legislation was enacted through the addition of the separate and specific state assurance obligation. This fact also was recognized and addressed in the development of the proposed rule by increasing the requirements for satisfying the state assurance obligation, as compared to a similar test used by NRC, contained in 10 CFR Part 30 Appendix A. NRG advised that the NRC's licensing requirements go even further to ensure that a PGC operating a nuclear reactor will be sufficiently liquid to meet its short- and mid-term operating requirements and that an applicant can be deemed "financially qualified" to receive a license to operate a nuclear power plant without maintaining an investment grade credit rating or comply with Edison Electric Institute (EEI) Credit Index standards.

Commission response

The commission disagrees with TIEC's and Cities' proposal to require an investment grade credit rating for PGCs and therefore declines to change the proposed language. In passing House Bill (HB) 1386, the Legislature recognized the need to encourage the development of new nuclear projects in the ERCOT deregulated energy market to obtain the many benefits of new nuclear capacity, such as significantly increasing baseload capacity for the state, adding needed fuel diversity, and generating zero greenhouse gases. The Legislature appears to have been fully aware that prospective nuclear operating companies might not have investment-grade credit ratings and crafted the bill to account for that fact by adding the "stand alone" state assurance obligation. The commission believes the proposed rule mirrors the statute to account for PGCs that do not have investment grade credit ratings by increasing the NRC requirements for satisfying the state assurance obligation. The financial health standard of the PGC was drafted based on a similar test contained in the NRC's decommissioning rules (10 CFR Part 30 Appendix A) but strengthened to account for PGCs that do not have investment grade ratings. Specifically, the proposed rule increases the level of tangible net worth from 6 times to 10 times, and increases the minimum tangible net worth from $10 million to $500 million. These changes are adequate to address the additional risk resulting from a PGC's lack of investment-grade ratings. The commission is concerned that utilizing TIEC's approach could lead to the failure of this program and effectively halt development of nuclear projects in Texas because interested entities that are not investment grade would not be allowed to participate.

§25.304(k) State Assurance Obligation

TIEC outlined the ways in which the assurance obligation can be satisfied under the proposed rule. TIEC advised that to the extent that the PGC has posted the full assurance amount in cash to establish its creditworthiness under subsection (j) and maintains the full amount as assurance under subsection (k), it would have a lower level of concern. However, TIEC also stated that, to the extent that the PGC relies on one of the other methods, issues may well arise with respect to the level of financial assurance actually provided. Therefore, to provide the appropriate level of assurance, TIEC suggested that the commission adopt standards similar to those used by ERCOT in its protocols, the EEI Electric Master Agreement, and the International Swaps and Derivatives Association (ISDA) Master Agreement and Credit Annex. TIEC advised that these methods permit the establishment of a threshold dollar amount, which is the equivalent of an unsecured line of credit, based upon the creditworthiness of the entity providing the assurances. The threshold amount, if greater than zero, TIEC stated, is compared to the amount of the liability. In this instance, the liability is the state assurance obligation

described in subsection (k) as "the discounted value of the annual decommissioning funding for the relevant period up to 16 years," TIEC stated. To the extent that the state assurance obligation exceeds the threshold amount, collateral must be posted (as contemplated under subsection (k)(1) of the proposed rule), TIEC advised.

TIEC commented that the threshold amount and the creditworthiness of the PGC or any guarantor would not be set in stone; rather, each would be subject to a periodic review of the adequacy of the level of assurance and the need for collateral. The approach that TIEC suggested is modeled after the ERCOT Protocols (creditworthiness standards), and would be applied in selecting which of the options are appropriate for a particular PGC. TIEC stated that to the extent an entity falls below investment grade, then there would be no unsecured line of credit, and the full amount of the obligation must then be supported by collateral. TIEC commented that, for this reason, it is inappropriate to allow a sub-investment-grade company to participate in these mechanisms as an initial matter. In addition, TIEC offered that because of liquidity issues related to market-valued financial instruments, the additional acceptable collateral be limited to short-term and long-term Treasury instruments. TIEC also stated that the same criteria governing the PGC should apply to any guarantor at all times, including when the guarantor first provides the guarantee, annually at the time of the filing of the annual report and in the event of any material change. TIEC also offered proposed language that, to the extent an entity does not have an investment grade credit rating, it must establish that its creditworthiness is at least equivalent to the financial standards that support an investment grade credit rating, based upon its audited financial statements, to be entitled to consideration for a threshold amount in excess of zero.

In their reply comments, both Exelon and NRG disagreed with TIEC's proposal. Exelon stated that TIEC's entire method for importing EEI Credit Index standards for swaps and derivatives as an overlay to the state assurance obligation hinges on the false premise that a PGC developing a nuclear plant in Texas would be expected to have an investment grade credit rating. Exelon stated this is not accurate because the parent companies of PGCs developing nuclear plants in Texas may or may not have investment grade credit ratings and PGCs that are not investment grade would not be able to meet the requirements suggested by TIEC. As a result, Exelon stated, TIEC is effectively arguing for a requirement that the prepayment of the state assurance obligation is the only acceptable mechanism, which is in conflict with the statutory mandate of PURA §39.206(1) that the available mechanisms "shall include, but not be limited to, parent guarantees and support agreements, letters of credit, surety or insurance." Exelon advised that the phrase "support agreement" is a reference to the type of existing financial support arrangement that NRG Energy, Inc., currently provides to its subsidiary NRG South Texas LP which provides assurance to the NRC that this PGC will have adequate funds available to pay for the operation and maintenance of its 44% interests in South Texas Project Nuclear Generating Station. Exelon stated that, in connection with this support agreement, the NRC does not require that NRG Energy, Inc., maintain an investment grade credit rating or comply with EEI Credit Index standards, and such requirements are similarly inappropriate for the proposed rule. NRG replied that the type of test suggested by TIEC was designed primarily to protect creditors operating in a volatile trading market in which their risks are substantial because of the dollar amounts involved and the rapidity with which credit exposure can change. In contrast, NRG advised, decommissioning obligations are clearly established, predictable, annual payments that are only periodically adjusted based on the funding requirements of the trust (and expected decommissioning costs), with concurrent adjustment to the assurance obligation under the proposed rule. NRG also stated the approach proposed by TIEC lacks the stability and certainty necessary for the type of long-term commitment required for decommissioning as well as the certainty needed today by nuclear developers in understanding with precision the costs of the decommissioning obligation for purposes of financial modeling to determine if a project is viable.

NRG also argued that in considering the reasonableness of the assurance methods, it is important to clearly recognize that any risk of default is mitigated by several factors: (1) failure to meet funding obligations is a violation of PURA and NRC requirements, subject to enforcement and operating license suspension; (2) even in bankruptcy (the ultimate creditworthiness concern), decommissioning payments must be made for the plant to generate revenue (and protect creditors); (3) any risk to customers will not be incurred until the plant is fully licensed, constructed, and loaded with nuclear fuel, such that all other risks (regulatory, costs, financing, power sales) have been resolved and a valuable capital asset is in operation; (4) only six nuclear units can use this program; (5) the NRC has its own thorough financial review of nuclear owners to ensure financial viability as a condition to build and operate nuclear units (a much broader and fundamental concern than decommissioning funding); (6) the commission has strong oversight of the trust funds; (7) decommissioning funds cannot be used for any other purposes; (8) any defaulted payments must be replenished before a plant may resume operations (with either the same or a new operator); and (9) a solid history, over 40 years, of safe and reliable operations at nuclear plants including no defaults on decommissioning obligations.

In its reply comments, Cities voiced its support for TIEC's position on the requirement of the appropriate collateral or assurances by the PGC to protect retail customer interests from the impact of potential decommissioning shortfall events.

TIEC also suggested that subsection (k)(4), the provision allowing a PGC to satisfy the state assurance obligation "using any other acceptable method," should be deleted because of its concern with having to review and evaluate potentially complicated financial proposals in these cases. TIEC commented that it would be better for all parties to have the acceptable methods specifically delineated in the rule.

Exelon, in its reply comments, advised that the commission should reject TIEC's request that the rule eliminate flexibility for approving alternative methods of providing for the state assurance obligation. Exelon commented that the NRC includes similar flexibility in its decommissioning funding assurance rules, 10 CFR §50.75(e)(vi) and that TIEC's claim of burden attributable to "a myriad of cases" involving complex proposals is not accurate in light of the fact that PURA §39.206 applies only to the first six nuclear plants under construction before January 1, 2015.

Similarly, NRG replied that subsection (k)(4) is required by the statute, which sets out a non-exclusive list of assurance methods and that the NRC includes comparable flexibility in its decommissioning funding assurance rules.

Finally, TIEC advised that the provision in subsection (k) that allows the state assurance funds to be used for other similar

purposes needs to be clarified to ensure that the state assurance necessary under the rule is superior to any other obligation. TIEC advised that this is necessary because, in the case of a distressed company, there might not be any mechanism to replenish the funds if they were called upon by another obligation.

Luminant commented that subsection (k)(2)(A)(i)-(iv) provides four requirements for the parent company of a PGC to meet to satisfy the state assurance obligation as a guarantor. Luminant stated that if a PGC can demonstrate that it, on its own, meets the four criteria, it should be considered to satisfy the intent of the proposed rule. Luminant suggested that the commission revise the proposed rule to allow for a PGC to directly demonstrate satisfaction of the state assurance obligation by complying with the criteria in subsection (k)(2)(A)(i)-(iv) on its own, in addition to allowing for the option of showing that a corporate parent or other entity offering a guarantee or financial support agreement meets those four criteria.

In its reply comments, TIEC stated that it does not disagree that the PGC could meet the state assurance obligation itself without a financial guarantee by the corporate parent. However, TIEC maintained, if the PGC seeks to directly meet this criteria, it must still meet a minimum threshold level of creditworthiness, as outlined in TIEC's initial comments above. In keeping with its original position, TIEC reiterated that, in addition to meeting this minimum threshold, which TIEC recommends be an investment grade credit rating, the PGC (or its parent or guarantor) must meet the state assurance obligation, which requires measuring the assurance obligation versus the size and credit rating of the entity attempting to make the assurance. Any shortfall in the credit of the entity must then be secured by the posting of collateral and this process should apply regardless of whether it is the PGC or some other entity seeking to meet the state assurance obligation, TIEC advised.

Commission response

The commission disagrees with TIEC and Cities. The Legislature established the concept of a buffer for customer risk in the event of funding default through the state assurance obligation. As proposed in the rule, the state assurance obligation is economically valuable and provides a sufficient buffer against default. Moreover, the financial assurance mechanisms are designed to be stable, clear, and attainable for the entities for which they are designed. The commission believes the state assurance obligation should not be burdened with financial tests that are unstable and unnecessarily restrictive and that would effectively defeat the program and minimize its usefulness. The rule provides alternate mechanisms with criteria for each without raising financial barriers to entry that would limit participation to a minority of PGCs. Similarly, the commission does not agree with TIEC that requiring PGCs to maintain the same financial metrics as those of investment grade entities is the proper solution either. The commission believes that the concept of the state assurance mechanism implies that there should be less restrictive credit standards for nuclear decommissioning obligations than an investment grade credit rating. Therefore, the commission declines to make any changes in the financial requirements of the state assurance obligations.

The commission agrees with TIEC that it is critically important that the state assurance obligation requirement be met for a PGC to be in compliance with PURA §39.206(l) and subsection (k) of the rule. However, the commission believes the rule provides adequate restrictions and gives it the opportunity to initially approve and monitor the replenishment of any amounts withdrawn for any other purpose. Therefore, the commission declines to incorporate TIEC's suggested language.

The commission disagrees with TIEC that subsection (k)(4) should be deleted because of a concern with having to review and evaluate potentially complicated financial proposals in these cases. One objective the commission has long embraced is that competition in the electric industry will lead to innovation. Such innovation should not be automatically rejected merely because it may require additional thought and examination by regulators to assure that it is in compliance with the law. Innovation that facilitates the growth of competition without causing harm and that is subject to initial and ongoing commission oversight should be encouraged. Subsection (k)(4) is consistent with these objectives. Therefore, the commission will not delete subsection (k)(4) as TIEC suggested.

The commission agrees with Luminant's recommendation to allow a PGC to directly demonstrate satisfaction of the state assurance obligation by complying with the criteria in subsection (k)(2)(A)(i)-(iv) on its own and has added the appropriate language to the subsection as requested.

§25.304(l) Annual Funding Obligation

TIEC stated that the proposed rule, while allowing the commission to direct the trustee to seek remittance of the funding from the entity providing a guarantee or surety, does not require the trustee to seek payment from the collateral or guarantor should the PGC fail to make the payment within 60 days after notice of default. Thus, TIEC requested that the rule be revised to require the trustee to withdraw payment from collateral held, or to exercise a claim against any guarantee or surety of the PGC. Furthermore, TIEC noted, to the extent that an entity has an established threshold in excess of zero under its proposed creditworthiness mechanism as a result of the most recent credit review, in the event of default, the rule must provide that the threshold amount be immediately reduced to zero, and the PGC must post within a reasonable time (not more than 15 days) sufficient collateral to cover future funding obligations up to the full net present value of 16 years' worth of payments.

Commission response

The commission disagrees with TIEC that the trustee should be given the authority in the rule to seek payment from the collateral or guarantor should the PGC fail to make the payment within 60 days after notice of default. Once the commission has been notified of the failure to make payment, it can decide whether to commence a formal proceeding, or undertake any other actions it deems appropriate. Allowing the trustee to seek payment when seeking payment might not be consistent with the commission's objectives would limit the commission's ability to consider all available alternatives. As discussed above, the commission does not agree with TIEC's creditworthiness rating mechanism; therefore, it has not incorporated TIEC's suggested language.

§25.304(m) Funding Shortfall and Unspent Funds

Cities commented that PURA §39.206(p) provides that, if retail customers are required to pay a portion of the costs of decommissioning a nuclear generating unit that remains operational, the PGC or any new owner of the generating unit "shall repay the costs the electric customers incurred" over a period established by the commission. Cities advised the rule as proposed does not implement the PURA §39.206(p) requirement, and that proper implementation would allow for repayment of funds contributed by retail customers to be conducted on an ongoing ba-

sis so that no un-refunded, unspent funds would remain after the unit is decommissioned, thereby eliminating the need to deal with this issue in subsection (m)(2). Cities also suggested deleting the language of the rule pertaining to funds that remain unspent after decommissioning. Finally, Cities provided additional language on the allocation of any shortfall to retail customers of any municipally-owned utility or electric cooperative.

In its reply comments, TIEC agreed with Cities' comments that the proposed rule lacks adequate procedures to address the repayment of any shortfall amounts paid by customers and that PURA §39.206(p) specifically provides for the repayment of costs incurred by customers. Therefore, TIEC commented that the commission should insert language to ensure that shortfalls be repaid as required by the statute.

NRG, in its reply comments, advised that the language of the proposed subsection mirrors the language of the statute and that the additions and deletions proposed by Cities would change the language of the statute. NRG also stated that, to the extent Cities want the language from §39.206(p) to be included in the rule, NRG suggests that the statutory language be added to §25.304(m) as a new subsection.

Commission response

The commission agrees with Cities and TIEC that the repayment of retail customers' funds contributed by retail customers while the nuclear generating unit is operational should not be contingent upon the conclusion of decommissioning. Therefore, the commission has incorporated Cities' proposed language into the rule. The commission does not agree with Cities that its proposed language for funds that remain unspent after decommissioning should be deleted. The language of proposed subsection (m)(2) is consistent with PURA §39.206(r)(2). Similarly, the commission does not agree with Cities that additional language on the allocation of any shortfall to retail customers of any municipally-owned utility or electric cooperative is consistent with PURA §39.206(o) and has not included Cities' suggestion.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting §25.304, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §39.206 (Vernon 2007 and Supp. 2007) (PURA). PURA §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction. PURA §39.206 requires the commission to adopt rules governing the nuclear generating unit decommissioning cost plan.

Cross Reference to Statutes: PURA §14.002 and §39.206.

§25.304. Nuclear Decommissioning Funding and Requirements for Power Generation Companies.

(a) Purpose. The purpose of this section is to establish the terms for power generation companies (PGCs) that are licensed by the Nuclear Regulatory Commission for using a PGC decommissioning trust to satisfy the financial assurance requirements for decommissioning a nuclear generating unit and to delineate the rights and obligations of PGCs electing to use a commission-approved method for providing funds from Texas customers for decommissioning a nuclear generating unit, as a means of complying with nuclear decommissioning financial assurance requirements.

(1) A PGC is not required to use the methods set out in this section and may discontinue the use of the methods set out in this section, if it chooses to satisfy the financial assurance requirements of the federal Nuclear Regulatory Commission by using other methods acceptable to the Nuclear Regulatory Commission.

(2) A PGC decommissioning trust established in accordance with this section is separate from a Nuclear Decommissioning Trust created under §25.303 of this title (relating to Nuclear Decommissioning Following the Transfer of Texas Jurisdictional Nuclear Generating Plant Assets).

(b) Applicability. A PGC owning all or a portion of a qualifying nuclear generating unit may use a PGC decommissioning trust as an external sinking fund in compliance with this section, provided that the use of the methods of financial assurance set out in this section shall be available only to the first six nuclear generating units under construction after January 1, 2007 and before January 15, 2015, that elect to use a PGC decommissioning trust.

(c) Definitions.

(1) Decommissioning--includes the safe decommissioning and decontamination of a nuclear generating unit, equipment, and materials consistent with federal Nuclear Regulatory Commission requirements.

(2) PGC decommissioning trust--Funds that are contained in one or more external and irrevocable trusts created for the purpose of protecting and holding revenue collected from a PGC to cover the costs of decommissioning a Texas jurisdictional nuclear generating plant at the end of its useful life. A PGC decommissioning trust is a type of external sinking fund that is established and maintained by setting aside funds periodically in an account segregated from the PGC's assets and outside the PGC's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operations is expected.

(3) Retail electric customer--A retail electric customer in a geographic area of Texas in which retail customer choice has been implemented, or a retail electric customer of a municipally-owned utility or electric cooperative that has an agreement to purchase power from a nuclear generating unit.

(4) Under construction--A nuclear generating unit for which the PGC has initiated the pouring of safety-related concrete for the reactor building.

(d) Application. If a PGC elects to use a PGC decommissioning trust, the PGC shall submit an application to the commission for an order establishing the amount of annual decommissioning funding and approving trust agreements. A PGC may combine applications for more than one qualifying nuclear generating unit. An application must contain the following information:

(1) Identification of each nuclear generating unit included in the application;

(2) Quantification of the PGC's percentage of ownership of each unit;

(3) Decommissioning cost study using the most currently available information on the cost of decommissioning each unit as set out in subsection (h)(2) of this section;

(4) Funding analysis identifying the expected amount of annual decommissioning funding determined as set out in subsection (i) of this section;

(5) Description of the method to be used to satisfy the state assurance obligation set forth in subsection (k) of this section, including any guarantee agreements, support agreements, credit agreements, or letters of credit or surety bonds;

(6) Agreements with an institutional trustee and investment manager to manage the PGC decommissioning trust that are consistent with this section and the terms and conditions required by the federal Nuclear Regulatory Commission; and

(7) Projected date for beginning funding of the PGC decommissioning trust, which must be prior to the commencement of initial fuel load and commercial operation of the nuclear generating unit.

(e) Commission Review.

(1) The commission staff will endeavor to recommend approval, amendment, or disapproval of an application setting annual decommissioning funding and financial agreements to implement the trust requirements within 120 days of receipt of a sufficient application, unless a hearing on the application is required.

(2) A request for hearing shall be filed by the date specified by the presiding officer which shall be no more than 60 days after the filing of the application. If a hearing is scheduled, the commission will endeavor to issue a final order within 180 days after the filing of a request for hearing.

(3) If no hearing is requested, the commission staff concludes that the application setting annual decommissioning funding and the trust agreements meet all requirements of this section, and the commission staff recommends approval, the application may be approved administratively or informally pursuant to §22.35 of this title (relating to Informal Disposition).

(4) If the commission staff recommends an amendment to the funding or trust agreements, within 14 days after filing of staff's recommendation, the PGC shall either file an amended application incorporating the staff's proposed amendments or request a hearing.

(5) If no hearing is requested and the PGC files an amended application that meets all requirements of this section and incorporates the staff recommendations, the application may be approved administratively or informally pursuant to §22.35 of this title.

(6) If the commission staff recommends denial and the PGC requests a hearing, or if the PGC does not file an amended application incorporating staff's recommendations within 14 days, the request shall be docketed as a contested case proceeding to approve, modify, or reject the application.

(f) Order. An order approving the application shall establish the amount of annual funding necessary to meet the decommissioning obligations for the nuclear generating unit over the unit's operating license period as established by the federal Nuclear Regulatory Commission or over a shorter period of time at the election of the PGC.

(g) Annual Reports. On or before May 1 of each year, each PGC for which the commission has approved a funding amount and trust agreements under this section shall file an annual report for the prior year using a form approved by the commission. The report shall provide the status of the PGC's decommissioning trusts and any changes in the administration of the trusts, an update of its ability to fund the PGC decommissioning trust; and other information specified by the commission in the form.

(h) Periodic Commission Review. At least once every three years the PGC shall file a decommissioning cost study and funding analysis or updates of previous studies using the most current information reasonably available to the PGC.

(1) The commission shall review the studies submitted by a PGC and other currently available information using the procedure provided in subsection (e) of this section.

(2) During the initial and each periodic review of decommissioning costs, the following information shall be provided:

(A) The decommissioning cost study and funding analysis accompanied by a report and testimony supporting the analysis and the requested annual funding amount. The funding analysis shall be based on the most current information reasonably available concerning the cost of decommissioning, an allowance for contingencies of not more than 10% of the cost of decommissioning, the balance of funds in the decommissioning trusts, anticipated escalation rates, the anticipated after-tax return on the funds in the trust, and other relevant factors. In no event will the cost estimate for basic radiological decommissioning be less than the minimum amount required by the federal Nuclear Regulatory Commission. The funding analysis shall be accompanied by a description of the assumptions used in the analysis and shall calculate the required annual funding amount necessary to ensure sufficient funds to decommission the nuclear generating plant at the end of its useful life.

(B) A demonstration that the decommissioning funds are being or will be invested prudently and in compliance with the investment guidelines in subsection (o) of this section.

(C) A demonstration of efforts to achieve optimum tax efficiency as defined in subsection (o)(2)(C) of this section, including, as applicable, maintenance of tax-exempt status or efforts to achieve "qualified" status in accordance with Internal Revenue Code §468A (or any successor thereto) with respect to the PGC's taxable PGC decommissioning trusts.

(D) Confirmation that the federal Nuclear Regulatory Commission either has made, or will make, a finding that there is reasonable assurance of the financial qualifications of the PGC, as required by federal regulations.

(E) Compliance with the state funding assurance obligation set forth in subsection (k) of this section.

(3) The commission shall ensure that the amount of annual decommissioning funding is consistent with the most recent decommissioning cost study and funding analysis, and that the PGC decommissioning trust is adequately funded. The PGC shall update its state assurance obligation to reflect changes in the annual decommissioning funding amount.

(i) Annual Decommissioning Funding Amount. The amount of annual decommissioning funding for a PGC decommissioning trust shall be an amount that, based on such factors as the balance of funds in the decommissioning trust, anticipated escalation rates, and anticipated after-tax return on funds in the decommissioning trust, will cover the cost of decommissioning a nuclear generating unit at the end of its operating license period. The amount shall be calculated based on the most current reasonably available information, consistent with the most recent decommissioning cost study, and divided by the remaining years of the license or a shorter period of time at the election of the PGC. The decommissioning cost study and funding analysis shall include the information required by subsection (h)(2)(A) of this section. The commission, on its own motion or on the motion of the commission staff, may initiate a proceeding to review the PGC's trust balances or the annual funding amount. The PGC shall provide any information required to conduct the review in accordance with the commission's procedural rules.

(j) Creditworthiness of PGC. For the purposes of the initial application under this section, creditworthiness of the PGC will be established primarily through satisfying the State Assurance Obligation as provided for in subsection (k) of this section.

(k) State Assurance Obligation. A PGC using a commission approved PGC decommissioning trust shall provide additional financial assurances that funds will be available to satisfy 16 years of annual decommissioning funding, based on the most recent annual decommissioning funding amount approved by the commission (the state assurance obligation amount). If the remaining funding contribution period is less than 16 years, the state assurance obligation will be based on the remaining number of years of annual decommissioning funding. The state assurance obligation amount will be the discounted value of annual decommissioning funding for the relevant period up to 16 years. Any arrangement for satisfying the state assurance obligation shall permit the trustee of a decommissioning trust to demand payment by any company holding funds or providing an assurance and require the company holding funds or providing an assurance to remit funds to the trust, in accordance with this section. The PGC shall include in its annual report a demonstration of compliance with the requirements of this subsection. The state assurance may be used to provide assurance required by state or federal law for other similar purposes relating to the operation of the facility, such as assurance for the funding to cover estimated operation costs, provided that adequate terms are included to replenish the amounts available under the assurance mechanism if funds are withdrawn for any such other purpose. The state assurance obligation may be accomplished by using one or more of the following methods at the election of the PGC, in the form approved by the commission:

(1) A PGC may satisfy the state assurance obligation by depositing the required amount of funds into an escrow account, a government fund, a nuclear decommissioning trust subject to the commission's investment standards set out in this title, or other type of acceptable agreement with an entity whose operations are regulated and examined by a federal or State agency.

(2) A PGC may satisfy the state assurance obligation by obtaining a written guarantee or financial support agreement from a direct or higher-tier parent corporation or a corporation with a substantial business relationship with the PGC or by meeting the following standards itself. The guarantee or financial support agreement must be payable to the PGC decommissioning trust. The parent or supporting corporation, or PGC must meet one of the following standards:

(A) The parent or supporting corporation, or PGC must have:

(i) Tangible net worth of at least 10 times the state assurance amount, excluding the net book value of the nuclear units subject to the state assurance obligation;

(ii) Tangible net worth of at least $500 million;

(iii) Net working capital of at least 10 times the annual decommissioning funding amount; and

(iv) Assets located in the United States amounting to at least 90% of the total assets or at least 10 times the state assurance amount.

(B) The parent or supporting corporation, or PGC must be otherwise financially qualified, based upon a finding by the commission that there is reasonable assurance that the parent or supporting corporation will be able to meet its obligations under the guarantee or other agreement.

(3) A PGC may satisfy the state assurance obligation by providing an adequate surety, insurance, or other guarantee method that meets the following minimum requirements:

(A) A guarantee that the state assurance obligation will be paid to the PGC decommissioning trust upon any default by the PGC in satisfying its annual funding obligation.

(B) A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to satisfy the state assurance obligation must contain the following conditions:

(i) The surety method or insurance must be open-ended, or, if written for a specified term, such as five years, must be renewed automatically, unless 90 days or more prior to the renewal day the issuer notifies the commission and the PGC of its intention not to renew. The surety or insurance must also provide that the full face amount will be paid to the PGC decommissioning trust automatically prior to the expiration without proof of forfeiture if the PGC fails to provide a replacement acceptable to the commission within 30 days after receipt of notification of cancellation.

(ii) The issuer must have a minimum rating of A- by Standard and Poor's Corporation, A3 by Moody's Investor's Service or the equivalent rating from A.M. Best.

(iii) The surety or insurance must be payable to the PGC decommissioning trust.

(4) A PGC may satisfy the state assurance obligation using any other method acceptable to the commission considering the relative risk factors and creditworthiness attributes of the applicant's financial characteristics to minimize exposure of retail electric customers to default by power generation companies.

(5) A PGC shall notify the commission within 10 days of the date of any material change in its ability to meet its state assurance obligation and provide a plan to cure any deficiency if the material change results in a PGC's inability to meet the state assurance obligation. Upon receipt of such notice, the commission may initiate a formal proceeding to review the PGC's ability to meet the state assurance obligation, or take any other action it deems appropriate. The PGC shall provide any information required to conduct the review in accordance with the commission's procedural rules.

(l) Annual Funding Obligation. A PGC using a PGC decommissioning trust shall remit annually to the fund the most recent annual decommissioning funding amount required by the commission. A PGC shall make periodic payments according to a schedule submitted to the commission and shall notify the trustee of the decommissioning trust and the commission within 10 days of the date of any failure to make a scheduled payment. The commission shall not consider a PGC to be in default of its annual funding obligation unless it fails to remit the necessary amounts within 60 days of notice of potential default. If a PGC is in default of its annual funding obligation, it shall notify the trustee of the decommissioning trust and the commission within 10 days of the date of the default. If the PGC fails to cure its failure to make scheduled payment within 60 days of the commission notice, the commission may direct the trustee to request that any entity providing state assurance remit annually to the fund the most recent annual decommissioning funding amount required by the commission in accordance with the schedule approved by the commission, including any payments that the PGC has failed to make, until the PGC is not in default or until the assurance is depleted.

(m) Funding Shortfall and Unspent Funds.

(1) If the PGC fails to meet its annual funding requirements and if the state assurance obligations are insufficient to meet the annual funding obligations or are otherwise not honored, the commission shall determine the manner in which any shortfall in the cost of decommissioning a nuclear generating unit shall be recovered from retail

electric customers in the state. For retail electric customers of a municipally-owned utility or an electric cooperative that has an agreement to purchase power from a nuclear generating unit, the amount of the shortfall in the cost of decommissioning the nuclear generating unit that the customers are responsible for is limited to a portion of that shortfall that bears the same proportion to the total shortfall as the amount of electric power generated by the nuclear generating unit and purchased by the municipally-owned utility or electric cooperative bears to the total amount of power generated by the nuclear generating unit.

(2) Decommissioning funds that remain unspent after decommissioning of the nuclear generating unit is complete shall be returned to the PGC and the retail electric customers based on the proportionate amount, in real terms, that the PGC and retail electric customers paid into the fund.

(3) While the nuclear generating unit is operational, as a condition of operating the generating unit, the PGC or any new owner shall repay the costs the electric customers incurred in a manner determined by the commission. The PGC shall be responsible for accounting for the need for repayment of any decommissioning shortfall amounts paid by customers and shall report such amounts pursuant to subsection (g) of this section. The PGC shall submit a proposal to repay shortfall amounts paid by customers pursuant to subsection (h) of this section. The commission shall review this information using the procedure described in subsection (e) of this section.

(n) Administration of the PGC Decommissioning Trust Funds.

(1) The PGC shall assure that the PGC decommissioning trust is managed so that the funds are secure and earn a reasonable return; and that the funds provided from the PGC's operating revenues, plus the amounts earned from investment of the funds, will be available at the time of decommissioning.

(2) The PGC shall appoint an institutional trustee and may appoint one or more investment managers. Unless otherwise specified in this section, the Texas Trust Code controls the administration and management of the PGC decommissioning trusts, except that the appointed trustees need not be qualified to exercise trust powers in Texas.

(3) The PGC shall retain the right to replace the trustee with or without cause. In appointing a trustee, the PGC shall have the following duties, which will be of a continuing nature:

(A) A duty to determine whether the trustee's fee schedule for administering the trust is reasonable, when compared to other institutional trustees rendering similar services, and meets the requirement of this section;

(B) A duty to investigate and determine whether the past administration of trusts by the trustee has been reasonable;

(C) A duty to investigate and determine whether the financial stability and strength of the trustee is adequate;

(D) A duty to investigate and determine whether the trustee has complied with the trust agreement and this section as it relates to trustees; and

(E) A duty to investigate any other factors that may bear on whether the trustee is suitable.

(4) The PGC shall retain the right to replace the investment manager with or without cause. In appointing an investment manager, the PGC shall have the following duties, which will be of a continuing nature:

(A) A duty to determine whether the investment manager's fee schedule for investment management services is reasonable, when compared to other such managers, and meets the requirement of this section;

(B) A duty to investigate and determine whether the past performance of the investment manager in managing investments has been reasonable;

(C) A duty to investigate and determine whether the financial stability and strength of the investment manager is adequate for purposes of liability;

(D) A duty to investigate and determine whether the investment manager has complied with the investment management agreement and this section as it relates to investments; and

(E) A duty to investigate any other factors which may bear on whether the investment manager is suitable.

(5) The PGC shall execute an agreement with the institutional trustee. The agreement shall be consistent with this section and may include additional restrictions on the trustee. A PGC shall not grant the trustee powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section. The agreement shall include the restrictions set forth in this section and may include additional restrictions on the trustee.

(A) The interest or other earnings of the trust become part of the trust corpus.

(B) A trustee owes the same duties with regard to the interest and other earnings of the trust as are owed with regard to the corpus of the trust.

(C) A trustee shall have a continuing duty to review the trust portfolio for compliance with investment guidelines and governing regulations.

(D) A trustee shall not lend funds from the PGC decommissioning trust to itself, its officers, or its directors.

(E) A trustee shall not invest or reinvest PGC decommissioning trusts in instruments issued by the trustee, except for time deposits, demand deposits, or money market accounts of the trustee. However, investments of a PGC decommissioning trust may include mutual funds that contain securities issued by the trustee if the securities of the trustee constitute no more than 5% of the fair market value of the assets of such mutual funds at the time of the investment.

(F) The agreement shall comply with all applicable requirements of the federal Nuclear Regulatory Commission.

(6) The PGC shall execute an agreement with the investment manager. If the trustee performs investment management functions, the contractual provisions governing those functions must be included in either the trust agreement or a separate investment management agreement. A PGC shall not grant the manager powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section. The agreement shall include the restrictions set forth in this section and may include additional restrictions on the manager.

(A) An investment manager shall, in investing and reinvesting the funds in the trust, comply with this section.

(B) The interest and other earnings of the trust become part of the trust corpus.

(C) An investment manager owes the same duties with regard to the interest and other earnings of the trust as are owed with regard to the corpus of the trust.

(D) An investment manager shall have a continuing duty to review the trust portfolio to determine the appropriateness of the investments.

(E) An investment manager shall not invest funds from the PGC decommissioning trust with itself, its officers, or its directors.

(F) The agreement shall comply with all applicable requirements of the federal Nuclear Regulatory Commission.

(7) Prior to executing an amended agreement with the institutional trustee or investment managers, the proposed amended agreement shall be filed at the commission for review along with a redlined version showing all changes made since the document was reviewed by the commission, and copies shall be provided to the commission's Legal Division and Rate Regulation Division or successor divisions.

(8) A copy of the trust agreement, any investment management agreement, and any amendments shall be filed with the commission within 30 days after the execution or modification of the agreement, and copies shall be provided to appropriate commission staff and the Office of Public Utility Counsel.

(o) Trust investments.

(1) The funds in a PGC decommissioning trust should be invested consistent with the following goals. The PGC may apply additional prudent investment goals to the funds so long as they are not inconsistent with the stated goals of this subsection.

(A) The funds should be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the trusts.

(B) In keeping with prudent investment practices, the portfolio of securities held in the PGC decommissioning trust shall be diversified to the extent reasonably feasible given the size of the trust.

(C) Asset allocation and the acceptable risk level of the portfolio should take into account market conditions, the time horizon remaining before the commencement and completion of decommissioning, and the funding status of the trust. While maintaining an acceptable risk level consistent with the goal in this section, the investment emphasis when the remaining life of the liability exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the trust should be on current income and the preservation of the fund's assets.

(D) In selecting investments, the impact of the investment on the portfolio's volatility and expected return net of fees, commissions, expenses and taxes should be considered.

(2) The following requirements shall apply to all PGC decommissioning trusts under this section. Where a PGC has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit. For purposes of this section, a commingled fund is defined as a professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

(A) The total trustee and investment manager fees paid on an annual basis by the PGC for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

(B) For the purpose of this subsection, a commingled or mutual fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in commingled or mutual funds. Once the portfolio of securities (including commingled funds) held in the PGC decommissioning trusts contains securities with an aggregate value in excess of $20 million, it shall be diversified such that:

(i) no more than 5.0% of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities, and

(ii) the portfolio shall contain at least 20 different issues of securities. Municipal securities and real estate investments shall be diversified as to geographic region.

(C) The PGC may invest the decommissioning funds by means of qualified or unqualified PGC decommissioning trusts; however, the PGC shall, to the extent permitted by the Internal Revenue Service, invest its decommissioning funds in "qualified" PGC decommissioning trusts, in accordance with the Internal Revenue Service Code §468A. The PGC shall avoid, whenever possible, the investment of taxable decommissioning funds in "unqualified" PGC decommissioning trusts.

(D) The use of derivative securities in the trust is limited to those whose purpose is to enhance returns of the trust without a corresponding increase in risk or to reduce risk of the portfolio. Derivatives may not be used to increase the value of the portfolio by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of Collateralized Mortgage Obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.

(E) The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for the trust is prohibited.

(F) The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value.

(i) Except as noted in clause (ii) of this subparagraph, when the weighted average remaining life of the liability exceeds five years, the equity cap is 60%;

(ii) When the weighted average remaining life of the liability ranges between five years and 2.5 years, the equity cap shall be 30%;

(iii) When the weighted average remaining life of the liability is less than 2.5 years, the equity cap shall be 0%. Additionally, during all years in which expenditures for decommissioning the nuclear units occur, the equity cap shall also be 0%;

(iv) For purposes of this subsection, the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each decommissioning outlay, where the weights are based on each year's expected decommissioning expenditures divided by the amount of the remaining liability in that year; and

(v) Should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the PGC shall, as soon as practicable, reduce the market value of the non-fixed income investments below the cap. Such reductions may be accomplished by investing all future contributions to the fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(vi) A PGC decommissioning trust shall not invest in securities issued by the PGC collecting the funds or any of its affiliates or any company providing security for the state assurance obligation; however, investments of a PGC decommissioning trust may include commingled funds that contain securities issued by the PGC if the securities of the PGC constitute no more than 5.0% of the fair market value of the assets of such commingled funds at the time of the investment.

(3) The following restrictions shall apply to all PGC decommissioning trusts. Where a PGC has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit.

(A) A PGC decommissioning trust shall not invest trust funds in corporate or municipal debt securities that have a bond rating below investment grade (below "BBB-" by Standard and Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased and shall reexamine the appropriateness of continuing to hold a particular debt security if the debt rating of the company in question falls below investment grade at any time after the debt security has been purchased. Commingled funds may contain some below investment grade bonds; however, the overall portfolio of debt instruments shall have a quality level, measured quarterly, that is not below a "AA" grade by Standard and Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having a "AAA" rating.

(B) At least 70% of the aggregate market value of the equity portfolio, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 index, assuming equal weighting of each ranked security in the index. If the quality rating, measured quarterly, falls below the minimum quality standard, the PGC shall as soon as practicable and prudent to do so, increase the quality level of the equity portfolio to the required level. A PGC decommissioning trust shall not invest in equity securities where the issuer has a capitalization of less than $100 million.

(C) The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by PGC decommissioning trusts include equity-indexed funds, actively managed equity funds, balanced funds, bond funds, and real estate investment trusts.

(i) The commingled funds should be selected consistent with the goals of this section.

(ii) In evaluating the appropriateness of a particular commingled fund, the PGC has the following duties, which shall be of a continuing nature:

(I) A duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;

(II) A duty to investigate and determine whether the past performance of the investment manager in managing the commingled fund has been reasonable relative to prudent investment and PGC decommissioning trust practices and standards; and

(III) A duty to investigate the reasonableness of the net after-tax return and risk of the fund relative to similar funds, and the appropriateness of the fund within the entire PGC decommissioning trust investment portfolio.

(iii) The payment of load fees shall be avoided.

(iv) Commingled funds focused on specific foreign countries, industries, or market sectors or concentrated in a few holdings shall be used only as necessary to balance the trust's overall investment portfolio mix.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER Q. SYSTEM BENEFIT FUND

16 TAC §§25.451, 25.454, 25.457

The Public Utility Commission of Texas (commission) adopts amendments to §25.451, relating to Administration of the System Benefit Fund, §25.454, relating to Rate Reduction Program, and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives, with changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9483). The amendments revise the calculation of the low-income discount to facilitate the provision of the discount to eligible customers and the management of funds available to the commission for this purpose. In particular, the amendments revise the language in §25.454 regarding the calculation of the discount factors used in the rate reduction; establish the method through which the Provider of Last Resort (POLR) rate will be determined for the purpose of calculating the discount factors when there is not a price-to-beat (PTB) or the PTB is higher than the POLR rate; and establish the time periods to set the discount factors based on POLR rates for a six-month period of time, with allowances for certain revisions. The amendments also amend §25.454 to more clearly reflect the enrollment process; allow companies providing pre-pay service consistent with §25.498, relating to Retail Electric Service Using a Customer Prepayment Device or System, to document the rate reduction on the customer's payment confirmation rather than through a line-item discount on the bill; delete requirements and references that are no longer in effect; and revise §§25.451, 25.454, and 25.457 consistent with the Bill Payment Assistance provisions addressed in Project Number 33811. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 34887 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Office of Public Utility Counsel, Texas Legal Service Center, and the Texas Ratepayers Organization to Save Energy (Consumer Coalition); Reliant Energy Retail Services, LLC (Reliant); and the Association of Retail Marketers, CPL Retail

Energy, Direct Energy, Green Mountain Energy, Stream Energy, Texas Energy Association for Marketers, TXU Energy Company, and WTU Retail Energy (REP Group). The commission received reply comments from the Consumer Coalition.

General Comments

The Consumer Coalition generally supported the proposal to use the minimum POLR rates as established in the electricity facts label. They believed these rates were sufficient to provide a meaningful discount and noted that they are readily available for public review.

Commission response

The commission considered these comments in its responses to the comments and associated changes set forth below.

PUC Substantive Rule §25.454

Subsection (d)(2)

The Consumer Coalition recommended reinstating the statutory language that refers to both the PTB and the POLR. While they acknowledged there is no longer a PTB in effect, they stated that PURA sets the standard and that should be accurately reflected in the rule. Additionally, new areas could opt into competition, necessitating the need for new PTB offers.

Commission response

The commission agrees that if a territory opts into competition, it is possible that a PTB could be set, and finds that it is more efficient to reinstate the language than to revise the rule at a later date. Therefore, the commission reinstates the deleted language in subsection (d)(2).

Subsection (e)(2)

Reliant commented that proposed subsection (e)(2)(A) provided that a determination regarding the sufficiency of appropriations may be triggered by a fluctuation of five percent or more of the POLR rate calculated pursuant to PUC Substantive Rule §25.43(k) in any month during the six month period. However, Reliant stated that the calculation in PUC Substantive Rule §25.43(k) is to be made on a customer-specific basis by using the actual hourly Market Clearing Prices of Energy for the customer. Therefore, there is no single result of this calculation that the commission staff could monitor to determine whether the five percent threshold had been reached. The calculation is different for each individual customer depending on which hours the customer used electricity. Reliant commented that given that the subject of the five percent threshold determination must be a single, calculable number, it logically follows that the POLR rate referenced in this phrase is intended to be the minimum POLR rate as that is the only single, calculable POLR rate applicable to all customers. Further, the minimum POLR rate is determined on an annual basis, and does not change monthly. Therefore, Reliant recommended that the five percent threshold apply to the minimum POLR rate.

In reply comments, the Consumer Coalition agreed. They stated that given that every POLR customer's rate can vary, it is "unwieldy" to use actual POLR rates for this calculation. Additionally, they stated their understanding that the commission does not currently maintain a database of actual POLR rates and, that given these limitations, the minimum POLR rate should be used to determine whether there should be an adjustment to the discount. The Consumer Coalition stated that one of the goals of the rulemaking was to simplify the process so that the discount can be set in a way that is both easy to administer and is transparent to the parties, and that using the minimum POLR rate for both setting and changing discount factors will help to achieve this goal.

Commission response

In its proposal to consider adjusting the discount factors based on PUC Substantive Rule §25.43(k), the commission intended to add additional flexibility into the rule for adjusting the discount factors should actual POLR rates vary substantially from the minimum POLR rates. However, the commission agrees with parties that the complexity and limitations that exist in attempting to use this calculation to evaluate a possible change in discount factors make this provision difficult, if not unworkable. Therefore, the commission amends the subsection as suggested. The commission believes that the rest of the subsection, as adopted, provides sufficient flexibility to adjust the discount factors to ensure that the appropriate amount of funds are available for the discounts for eligible customers.

The Consumer Coalition recommended adding language to require that the commission verify that no new funds will be forthcoming from the legislature to meet any deficiencies in funding. They suggested that the commission revise the discount factor if the Legislative Budget Board (LBB) notifies the commission that there is a projected insufficiency in the appropriations and the commission verifies that supplemental funds are not available for funding the discount at current levels. The Consumer Coalition stated that in this way, the PUC would take an active role in determining whether additional funding might be available.

Commission response

The commission actively monitors the balance of the fund and reports fund activity to the LBB quarterly. PURA §39.903(d) requires that the commission report to the Electric Utility Restructuring Legislative Oversight Committee if the fund is insufficient to fund certain purposes including the rate reduction. The commission does not find it appropriate to set the ability to reduce the discount on notification by the LBB of an insufficiency in funds. If there is an insufficiency in funds and a decrease in the percentage of rate reduction is warranted, it is the commission's responsibility to identify the issue and take action. Should the commission be informed of or find that additional funds are available to avoid a reduction of the discount, it would not have to take advantage of subsection (e)(2)(B). Therefore, the commission declines to amend subsection (e)(2)(B).

The Consumer Coalition recommended adding a subsection (e)(2)(C) as a "fresh look provision." They stated that it was their understanding that there is no general repository of publicly-available POLR rates available to the public for review, which makes it difficult for interested parties to conduct an analysis of how much actual POLR rates have changed or fluctuated over time. They suggested that the commission should have maximum flexibility in determining the appropriate discount factors.

Commission response

The commission agrees that it should have flexibility in setting the discount factor and therefore adds a subsection (e)(2)(C) that is generally consistent with the Consumer Coalition's suggestion.

The Consumer Coalition commented that the proposed rule deleted existing subsections (e)(2)(A), (B), and (C). They stated it was unclear why subsection (e)(2)(A) was deleted and rec-

ommended that it be reinstated. They stated that should new territories opt into competition and have a PTB established, there should be language addressing the computation of the discount for those areas.

Commission response

Consistent with the changes made to subsection (d), the commission reinstates language regarding setting discount factors based on the PTB that was previously in subsections (e)(2)(A) and (e)(2)(B). The provisions are reorganized into new subsection (e)(1)(D) to ensure that it is clear which provisions only apply to discount factors based on the PTB and which provisions only apply to discount factors based on the POLR rate.

Subsection (i)

Reliant commented that proposed subsection (i)(1) allows the commission discretion to, in the event that funds for the rate reduction for low-income customers are not available, require the Low-Income Discount Administrator (LIDA) to "maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsections (f)(1) and (f)(2) of this section if funds were available." Reliant stated that subsection (f)(2) refers to self-enrollment not automatic enrollment, and only (f)(1) should be referenced. If the word "automatic" were to be stricken from the proposed revision to comport with the addition of "and (f)(2)" to the sentence, the required self-enrollment process during a period of insufficient appropriations would add considerable expense for the commission and any third party volunteering to fund the LIDA during that period. Reliant stated that the same addition of "and (f)(2)" is repeated in the following sentence and is problematic for the same reasons. Reliant did not believe that the rule was intended to increase the cost to third parties and the commission to maintain a list of otherwise eligible customers. Reliant recommended that the existing language of subsection (i)(1) be maintained. In reply comments, the Consumer Coalition disagreed. They stated that the customer protection rules have two special provisions that apply to LITE-UP customers. First, retail electric providers (REPs) may not assess a penalty on delinquent bills for electric service to eligible customers receiving a low-income discount; and second, eligible low-income customers are allowed to pay deposits of more than 50 dollars in two equal installments. The Consumer Coalition stated that the proposed rule includes language that gives the PUC discretion to require LIDA to maintain a list of eligible customers (both automatic and self-enrollment customers) during times when there are insufficient funds to provide rate reductions to customers. The proposed rule recognizes that maintenance of an accurate list is for the explicit purpose of maintaining the late penalty waiver benefits, and maintaining an accurate list helps ensure that REPs comply with this provision of the customer protection rules. The Consumer Coalition stated that the cost of maintaining an accurate database is part of the reasonable cost of doing business in the state of Texas, and REPs are ultimately responsible for complying with the rule and the costs associated with such compliance.

Commission response

The commission did not intend for the proposed changes to be read to mean that REPs would be responsible for the self-enrollment function should funding be insufficient to maintain the electric rate reductions and the costs associated with determining eligibility for the rate reduction. The commission recognizes that the proposed language has caused confusion, and therefore, reverses the proposed changes to subsection (i)(1). However, the commission believes that it may be able to require LIDA to maintain the list of eligible customers to include self-enrollees in times when there is insufficient money for the rate reduction, and that it may be unnecessary to develop procedures outside of the rule for this purpose as currently envisioned in subsection (i)(2). Therefore, the commission amends subsection (i)(2) to clarify the intent that if funding is available to include self-enrollees on the list of eligible customers, the commission may require LIDA to continue this function.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007 and Supp. 2007)(PURA): (1) §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; (2) §39.101(e) provides that the commission has the authority to adopt necessary or appropriate rules for minimum service standards relating to customer deposits; and (3) §39.903 grants the commission the authority to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.903.

§25.451. Administration of the System Benefit Fund.

(a) Purpose. The purpose of this section is to implement the system benefit fund, including its administration, setting its revenue requirement, fee collection, reporting procedures, and review and approval of the fund pursuant to the Public Utility Regulatory Act (PURA) §39.903.

(b) Application. This subchapter applies to retail electric providers (REPs), and transmission and distribution utilities (TDUs) in an area where customer choice has been implemented, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated service area.

(c) Definitions. The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Fiscal year--The State of Texas fiscal year, beginning September 1 of one calendar year, and ending on August 31 of the subsequent calendar year.

(2) System Benefit Fund--A fund with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission, into which all fee collections are deposited and from which all disbursements of the fund are withdrawn.

(3) System benefit fee--A nonbypassable fee set by the commission to finance the System Benefit Fund. The fee shall be charged to electric retail customers based on the amount of kilowatt hours (kWh) of electric energy used, as measured at the meter and adjusted for voltage level losses.

(d) System benefit fee. The commission shall set the amount of the system benefit fee for the next fiscal year at or before the last open meeting scheduled for July of each year.

(1) The amount of the fee shall be based on the total revenue requirement as determined in subsection (e) of this section and the projected retail sales of electricity in megawatt hours (MWh) in the state as determined in subsection (f) of this section.

(2) The commission may, at any time during the fiscal year, review the revenues, fund balance, and projected disbursements, revise

the system benefit fee amount, and issue an order for the remainder of the year to accomplish the purposes of PURA §39.903. The TDUs shall implement the new fee in billings to the REPs within 30 calendar days of the date such order is issued. Whenever the fee is changed, the TDUs shall file with the commission an updated rate schedule for inclusion in the TDU's tariff manual, reflecting the new fee.

(3) The average fee may not exceed $0.65 per MWh.

(e) Revenue requirement. The revenue requirement shall be an amount of revenue necessary to fund the purposes outlined in PURA §39.903 consistent with legislative appropriations and expected fund revenue, operating costs of the Rate Reduction Program and other obligations of the fund, a necessary fund reserve balance, and any other purpose required by statute or legislative appropriations.

(f) Electric sales estimate. The TDUs, and when applicable, the MOUs and Coops, upon request by the commission, shall provide information on total retail electric sales in their service areas for the preceding calendar year, by April 1 of each year.

(g) Remittance of fees. Each TDU, MOU, or Coop collecting the system benefit fee from the REPs, MOUs, or Coops in its service area, shall remit the fees to the Comptroller on a monthly basis.

(1) Remittance of funds to the Comptroller shall comply with the Comptroller's rules governing payments and the method for making them.

(2) The collecting utility shall account for all system benefit fees received from the REPs, MOUs, or Coops in its service area separately from any other account in its records.

(3) Each TDU, MOU, or Coop collecting and remitting the system benefit fee to the Comptroller shall file with the commission at the time the money is remitted a report, on a commission-prescribed form, stating for each service territory the amount of the system benefit fee billed, the amount remitted to the Comptroller, and electric energy sold, in MWh. The report shall contain monthly amounts and year-to-date totals.

(h) Billing requirements. A TDU, an MOU, or a Coop shall send billing statements to the REPs indicating the amount of system benefit fee owed for the specified period. The billing and payments between the TDU and the REPs shall be governed by §25.214 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities), and between MOUs and Coops and the REPs by §25.215 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by MOUs and Coops).

(1) The REP shall remit to the TDU, an MOU, or a Coop an amount equal to the kWh of electric energy consumed by its customers in the utility's service area times the fee approved by the commission for that period.

(2) For those retail customers who switch to on-site generation pursuant to PURA §39.262(k), the system benefit fee shall be based on the amount of actual power delivered to them by a TDU.

(i) Reporting and auditing requirements. Each REP, and each MOU or Coop when applicable, providing rate reductions or one-time bill payment assistance to eligible customers shall keep records of such rate reductions and one-time bill payment assistance for at least three years from the date the rate reduction or one-time bill payment assistance is first provided to a customer to permit the commission or its agent to audit rate reduction and one-time bill payment assistance reimbursements. Reports filed under subsections (g) and (j) of this section and records relating to the identification of eligible customers shall also be subject to audit upon commission request.

(j) Reimbursement for rate reductions and one-time bill payment assistance. Each REP, or MOU or Coop, when applicable, shall submit to the commission a monthly activity report and request for reimbursement on a form prescribed by the commission. The commission's goal for the processing of a request for reimbursement is, not later than five business days after receipt of the monthly report, to prepare and deliver to the comptroller an authorization for reimbursement to the REP, MOU, or Coop. The Comptroller's goal for the processing of payments is to transfer the funds by the close of the next business day, following receipt of an authorization from the commission. The monthly activity report submitted by the REPs, MOUs, or Coops shall contain the following:

(1) The number of low-income customers that were provided rate discounts during the reporting period;

(2) The amount of reimbursement requested;

(3) The aggregate electric energy consumption in kWh for all low-income customers enrolled in the rate reduction program for the reporting period;

(4) The total amount of rate reductions provided to the low-income customers in the reporting period; and

(5) The total amount of one-time bill payment assistance provided to customers in the reporting period and the number of customers to which assistance was provided, pursuant to §25.455 of this title (relating to One-Time Bill Payment Assistance Program), as well as pertinent customer information required by the commission-prescribed form.

(k) Transfer of funds to other state agencies. Payment transfers to other state agencies pursuant to this rule shall be governed by statute, the Appropriations Act, and any procedures established by the Comptroller.

§25.454. Rate Reduction Program.

(a) Purpose. The purpose of this section is to define the low-income electric rate reduction program, establish the rate reduction calculation, and specify enrollment options and processes.

(b) Application. This section applies to retail electric providers (REPs) that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).

(c) Funding. The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:

(1) The requirements of subsections (e), (f) and (g) of this section are suspended until sufficient funding and spending authority are available.

(2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended when sufficient funding and spending authority are not available:

(A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);

(B) §25.457(i) - (j) of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives);

(C) §25.475(g)(4)(L) of this title (relating to Information Disclosures to Residential and Small Commercial Customers); and

(D) §25.43(d)(3)(D), (q)(1)(A) - (B), (q)(2)(A), and (q)(3)(A) of this title (relating to Provider of Last Resort).

(3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended if an eligibility list is not available as provided in subsection (i) of this section.

(d) Definitions. The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Discount factor--The amount of discount an eligible low-income customer must be provided by any REP, or MOU or Coop, when applicable, in the customer's area, expressed as cents per kilowatt-hour (kWh).

(2) Discount percentage--The percentage of discount established by the commission and applied to the lower of the price to beat (PTB) or minimum provider of last resort (POLR) rate in a particular service territory.

(3) Low-Income Discount Administrator (LIDA)--A third-party vendor with whom the commission has a contract to administer the rate reduction program.

(4) Rate reduction--The total discount to be deducted from a customer's electric bill. This reduction is derived from the discount factor and total consumption in accordance with subsection (e)(3) of this section.

(5) REP--For the purposes of this section, a retail electric provider and an MOU or Coop that provides retail electric service in an area that has been opened to customer choice.

(6) Minimum POLR rate--For the purposes of this section, the minimum POLR rate shall be the POLR rate posted on the commission's website on the Electricity Facts Label for each service territory for 1,000 kWh of usage.

(e) Rate reduction program. In each month for which funds are available for the low-income discount, all eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.

(1) Discount factors shall be determined in accordance with this paragraph, as the lower of the PTB or minimum POLR rate for each service territory multiplied by the approved discount percentage.

(A) The commission shall periodically establish the discount percentage. The discount percentage may be set at a level no greater than 20%.

(B) The commission staff shall calculate a discount factor for each service territory and post the discount factors on the commission website (www.puc.state.tx.us).

(C) Each discount factor based on the minimum POLR rate shall be in effect from May through October or November through April, subject to revision pursuant to subsection (e)(2) of this section.

(D) Each discount factor based on the PTB shall be recalculated when the PTB rate changes or the commission revises the discount percentage. The discount factor based on the PTB shall reflect any seasonal variation in the PTB.

(2) The commission may revise the discount factors set pursuant to subsection (e)(1) of this section through a change to the discount percentage because of one of the following occurrences:

(A) The commission staff determines that there are sufficient remaining appropriations for the fiscal year to support an increase in the discount percentage without exceeding available appropriations for the fiscal year. This determination may be triggered by the routine review by commission staff of disbursements and remaining appropriations, or by a fluctuation of five percent or more of the minimum POLR rate.

(B) The commission staff determines that there are insufficient remaining appropriations for the fiscal year, and a decrease to the discount percentage is necessary to ensure that funds spent do not exceed appropriations for the fiscal year.

(C) The commission determines that a change in the discount percentage is consistent with the objectives of this section and the public interest.

(3) All REPs shall provide the rate reduction to eligible low-income customers.

(A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill. If the discount factor changes for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website, or on the effective date of the discount factor, whichever is later.

(B) The rate reduction shall be calculated by multiplying the customer's total consumption (kWh) for the billing period by the discount factor (in cents/kWh) in effect during the billing cycle in which the bill is rendered. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied.

(C) The customer's discount amount shall be clearly identified as a line item on the electric portion of the customer's bill, including the description "LITE-UP Discount." If a monthly bill is not issued as provided by §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), the customer's receipt or confirmation of payment, or detailed information accessed by confirmation code, as described by §25.498 of this title, shall indicate that the discount was applied to the customer's charges with the words "LITE-UP" or "LITE-UP Discount."

(D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for rate reductions they provide to eligible low-income customers.

(f) Customer enrollment. Eligible customers may be enrolled in the rate reduction program through automatic enrollment or self-enrollment.

(1) Automatic enrollment is an electronic process to identify customers eligible for the rate reduction by matching client data from the Texas Health and Human Services Commission (HHSC) with customer-specific data from REPs.

(A) HHSC shall provide client information to LIDA in accordance with subsection (g)(1) of this section.

(B) REPs shall provide customer information to LIDA in accordance with subsection (g)(3) of this section.

(C) LIDA shall compare the customer information from HHSC and REPs, create files of matching customers, enroll these customers in the rate reduction program, and notify the REPs of their eligible customers.

(2) Self-enrollment is an alternate enrollment process available to eligible electric customers who are not automatically enrolled and whose combined household income does not exceed 125% of federal poverty guidelines or who receive food stamps or medical assistance from HHSC. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) Distributing and processing self-enrollment applications, as developed by the commission, for the purposes of initial self-enrollment, and for re-enrollment of self-enrolled and automatically enrolled customers;

(B) Maintaining customer records for all applicants;

(C) Providing information to customers regarding the process of enrolling in the low-income discount program;

(D) Determining customers' eligibility by reviewing information submitted through self-enrollment forms and determining whether the applicant meets the program qualifications; and

(E) Matching customer information submitted through self-enrollment forms with customer data provided by REPs, creating files of matching customers, enrolling matching customers in the rate reduction programs, and notifying the REPs of their eligible customers.

(3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy. If a person who self-enrolls claims to be eligible because of participation in a qualifying program, LIDA shall require the customer to submit a copy of proof of enrollment or eligibility letter that indicates enrollment of the applicant in the qualifying program.

(4) The following procedures govern a customer's re-enrollment.

(A) A self-enrolled customer may re-enroll by submitting a completed self-enrollment form.

(B) A customer who was formerly, but is no longer, automatically enrolled may re-enroll through self-enrollment.

(C) LIDA shall send a customer who is eligible to re-enroll a self-enrollment form which specifies a date for submitting the completed form that is not more than 30 days after the date the form is mailed. If the customer submits a completed form before the date specified on the form and LIDA determines that the customer is eligible for re-enrollment, the customer shall receive the rate reduction without interruption.

(D) If a customer does not return a properly completed form before the time specified by LIDA, the customer's rate reduction may be interrupted until LIDA determines that the customer is eligible.

(5) The eligibility period of each customer will be determined by the customer's method of enrollment.

(A) The eligibility period for self-enrolled customers is seven months from the date of enrollment.

(B) Automatically enrolled customers will continue to be eligible as long as the customers receive HHSC benefits. Once a customer no longer receives HHSC benefits, the customer will continue to receive the rate reduction benefit for a period of no more than 60 days, during which the customer may self-enroll.

(6) A customer who believes that a self-enrollment application has been erroneously denied may request that LIDA review the application, and the customer may submit additional proof of eligibility.

(A) A customer who is dissatisfied with LIDA's action following a request for review under this paragraph may request an informal hearing to determine eligibility by the commission staff.

(B) A customer who is dissatisfied with the determination after an informal hearing under subparagraph (A) of this paragraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(g) Responsibilities. In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

(1) HHSC shall:

(A) assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving HHSC benefits as detailed in the memorandum of understanding between HHSC and the commission; and

(B) assist in the distribution of promotional and informational material as detailed in the memorandum of understanding.

(2) LIDA shall:

(A) receive customer lists from REPs on a monthly basis through data transfer;

(B) retrieve the database of clients from HHSC on a monthly basis;

(C) conduct the self-enrollment, automatic enrollment, and re-enrollment processes;

(D) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;

(E) make available to each REP, on a date prescribed by the commission on a monthly basis, a list of low-income customers eligible to receive the rate reduction;

(F) notify customers that have applied for the rate reduction through the self-enrollment process of their eligibility determination and notify automatically enrolled and self-enrolled customers of their expiration of eligibility, and opportunities for re-enrollment in the rate reduction program;

(G) answer customer inquiries regarding the rate reduction program, and provide information to customers regarding enrollment for the rate reduction program and eligibility requirements;

(H) resolve customer enrollment problems, including issues concerning customer eligibility, the failure to provide discounts to customers who believe they are eligible, and the provision of discounts to customers who do not meet eligibility criteria; and

(I) protect the confidentiality of the customer information provided by the REPs and the client information provided by HHSC.

(3) A REP shall:

(A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;

(B) retrieve from LIDA the list of customers who are eligible to receive the rate reduction;

(C) upon commission request, monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3000 kWh in a month shall be considered a high-usage customer;

(D) apply a rate reduction to the electric bills of the eligible customers identified by LIDA within the first billing cycle in which it is notified of a customer's eligibility, if notification is received no later than seven days before the end of the billing cycle, or, if not, apply the rate reduction within 30 calendar days after notification is received from LIDA;

(E) notify customers twice a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;

(F) assist LIDA in working to resolve issues concerning customer eligibility, including the failure to provide discounts to customers who believe they are eligible and the provision of discounts to customers who may not meet the eligibility criteria; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general LITE-UP processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

(G) provide to the commission copies of materials regarding the rate reduction program given to customers during the previous 12 months upon commission request.

(h) Confidentiality of information.

(1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.

(2) All data transfers from REPs to LIDA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information.

(3) LIDA may use information obtained pursuant to this section only for purposes prescribed by commission rule, including use in determining eligibility for assistance under §25.455 of this title (relating to One-Time Bill Payment Assistance Program).

(i) Eligibility List for Continuation of Late Penalty Waiver Benefits.

(1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income customers that can be reimbursed from the system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsection (f)(1) of this section if funds were available. The procedures set forth in subsection (f)(1) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

(A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, ESI ID, service provider account number, and premise code;

(B) retrieve from LIDA the list of customers who would be eligible for automatic enrollment in the rate reduction program if funds were available;

(C) monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3,000 kWh in a month shall be considered a high-usage customer;

(D) assist LIDA in working to resolve issues concerning customer eligibility; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

(E) provide other information and assistance, upon request of the commission, to assist in implementation of this section.

(2) If funding is available to include self-enrollees in the list of eligible customers, the commission may, in its discretion, require LIDA to include self-enrollees in the list of eligible customers consistent with subsection (f)(2) of this section or set forth processes for determining eligibility in a procedural guide. The processes, to the extent feasible, will be consistent with subsections (f) and (g) of this section.

(3) If pursuant to subsection (i) of this section, the commission, through the LIDA or other means, provides the REPs with a list of eligible customers §25.480(c)(1) of this title, which requires that a customer receiving a low-income discount pursuant to the Public Utility Regulatory Act §39.903(h) may not be assessed a late penalty, shall be continued based on the customer's eligibility for the discount, rather than the customer's receipt of the discount.

(j) Deposit Installment Benefits.

(1) If LIDA is maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, then a customer or applicant who qualifies for the rate reduction program is eligible to pay deposits over $50 in two installments, pursuant to §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(A) A REP who requires a customer or applicant to provide sufficient information to the REP to demonstrate that the customer or applicant qualifies for the rate reduction program may request the following information:

(i) a letter from the customer's or applicant's current or prior REP stating that the applicant is on the list of customers who would be eligible for the rate reduction if funds were available;

(ii) a bill from the current or prior REP that demonstrates that the customer or applicant is enrolled in the rate reduction program; or

(iii) other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis.

(B) Upon the request of a customer, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. This letter may be combined with a letter issued to a customer regarding bill payment history.

(2) If LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits over $50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may, on a non-discriminatory basis, require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.

(k) Voluntary Programs. Nothing in this section is intended to impair a REP's ability to voluntarily provide a low-income discount or other benefits to low-income customers.

(1) The list of low-income customers who would be eligible for the rate reduction if funds were available, or other non-discriminatory criteria, may be utilized by a REP as evidence of a customer's eligibility for the REP's voluntary low-income program, if offered.

(2) In the event a REP chooses to voluntarily offer a discount or other benefits to low-income customers, the REP shall treat any information obtained regarding the customer's financial status or enrollment in a government program as confidential information and shall not disclose the information to any other party or use the information for any purpose other than enrollment in a voluntary low-income program.

§25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.

(a) Purpose. The purpose of this section is to implement the system benefit fee and associated programs as they relate to the service areas of municipally owned utilities (MOUs) and electric cooperatives (Coops).

(b) Applicability. This section applies to an MOU and Coop, no sooner than six months preceding the date on which an MOU or Coop implements customer choice in its certificated service area.

(c) Implementation of fee collection. Not earlier than six months before customer choice begins, and not later than the day of implementation of customer choice in its service territory, an MOU or a Coop shall impose on its customers, including its transmission and distribution customers who choose to receive a single bill from the MOU or Coop, a system benefit fee, as determined by the commission pursuant to §25.451(d) of this title (relating to the Administration of the System Benefit Fund).

(d) Billing requirements. Each retail electric provider (REP), MOU, and Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or a Coop shall comply with the billing requirements in §25.451(h) of this title.

(e) Remittance of funds. The system benefit fee collected by an MOU or a Coop shall be remitted to the Texas Comptroller of Public Accounts (Comptroller) pursuant to §25.451(g) of this title.

(f) Service area revenue requirements. The commission staff shall calculate the amount available for low-income discounts or one-time bill payment assistance for the service area of each MOU and Coop based on the projected system benefit fee revenue from the service area of the MOU or Coop and any reduction in the fee for education or low-income programs approved by the commission. The commission shall, on a request by an MOU or a Coop, reduce the system benefit fee, imposed on the requesting entity's retail customers, by the amount expended by the requesting MOU or Coop, or their retail customers, for local, low-income programs and local programs that educate customers about the retail electric market in a neutral and non-promotional manner. The qualifying low-income programs must reduce the cost of electricity to the recipients of such programs and be targeted at customers whose total household income does not exceed 125% of federal poverty guidelines. The amount available for low-income discounts and one-time bill payment assistance shall be established and may be revised by the commission in the following manner:

(1) By calculating a share of the total revenue in the System Benefit Fund that is spent on each of the programs as described in Public Utility Regulatory Act (PURA) §39.903(e) in the preceding 12 months for all service areas; and

(2) By applying the share of total spending on programs pursuant to PURA §39.903(e)(1) to the projected payments of each MOU or Coop into the System Benefit Fund, reduced by any adjustment for authorized education or low-income programs.

(g) Annual reports. Upon request by the commission and annually on a schedule established by the commission, an MOU or a Coop shall provide to the commission the following:

(1) The total in kWh of electric power sold to its retail customers in a recent 12-month period specified by the commission;

(2) The total amount spent on qualifying, local, low-income programs, for which the reduction is being sought, in such a recent 12-month period;

(3) The total amount spent on qualifying, local, educational programs, for which the reduction is being sought, in such a recent 12-month period;

(4) The total amount projected to be spent on qualifying, local, low-income programs, for which reduction is being sought, in a future 12-month period specified by the commission; and

(5) The total amount projected to be spent on local, qualifying, educational programs, for which reduction is being sought, in such a future 12-month period.

(h) Allocation of revenue requirement. An MOU or Coop shall allocate its service area revenue requirement established by the commission staff under subsection (f) of this section among those programs provided by PURA §39.903(e) for which funds have been authorized. The MOU or Coop shall be responsible for determining such allocation.

(i) Discount factor and rate reduction. An MOU or a Coop shall establish a discount factor, consistent with the amount of its service area revenue requirement allocated by the MOU or Coop by the rate reduction for low-income customers in its service area. Each REP, MOU, or Coop that bills retail customers for electric power and energy shall apply a rate reduction to the bills of eligible low-income customers based on the discount factor established by the MOU or Coop in effect during the billing cycle in which the bill is rendered, multiplied by the customer's total consumption (kWh) for the billing period. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied. The rate reduction will be clearly identified as a line item on the electric portion of the customer's bill. An MOU or Coop may permit the rate reduction to be identified for a

pre-pay customer in accordance with §25.454 of this title (relating to the Rate Reduction Program).

(j) Reimbursement. Each REP, and MOU or Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or Coop is entitled to reimbursement under §25.451(j) of this title for the rate reductions and one-time bill payment assistance it has provided to eligible customers and shall file a monthly activity report in order to request reimbursement.

(k) Monthly reporting requirements. If an MOU or a Coop continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the MOU or Coop shall file with the commission two reports. One report will identify the amount of system benefit fee collected and paid by the reporting entity's retail customers; the other report shall identify the amount of system benefit fee paid by the transmission and distribution only customers. Both reports shall be filed with the commission at the time the system benefit fee is paid pursuant to §25.451(g) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: December 21, 2007
For further information, please call: (512) 936-7223

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PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

The Texas Racing Commission adopts amendments to 16 TAC §§311.1, 311.101, 311.102, 311.104, 311.105, 311.108, 311.212, 311.214, 311.216, and 311.301. The Commission also adopts new §311.52 and §311.111. The amendments and new rules were published in the January 4, 2008, edition of the *Texas Register* (33 TexReg 42). They are adopted in conjunction with the Commission's rule review of Chapter 311 pursuant to Texas Government Code, §2001.039, as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7699). The proposed amendments and new rules are adopted without changes to the proposal as published, with the exception of §311.104 which is adopted with changes and will be republished.

The amendments relate to: the requirement to be licensed by the Commission; the specific responsibilities of owners, trainers, jockeys, and agents; the responsibilities that apply to all occupational licensees; and prohibitions on the use and possession of alcohol and drugs by occupational licensees. The new sections relate to a new category of license for owners' spouses and the licensing requirements for jockey agents.

The changes to §311.1 clarify that an individual who enters an animal into a race is participating in racing and therefore must be licensed at the time of entry. This change will enhance the ability of the racing associations to orderly accept and process race entries.

New §311.52 authorizes an owner's spouse to apply for a Spouse's License, which is a new category of license. Currently, if an owner wants his or her spouse to accompany the owner on the backside, the owner or the trainer must sign in the spouse as a visitor at the security gate. This is inconvenient for the owner, the trainer, and security staff. By undergoing the licensing process, a spouse will have increased access to the backside, while also increasing security by undergoing a criminal background check and becoming subject to the Commission's rules and regulations.

The changes to §311.101 clarify the licensing requirements for owners by incorporating a reference to existing §313.301(a)(2), which requires a person to apply for an owner's license before claiming a horse, even though at that point the person may not be the owner of record of a properly registered horse. The changes also establish that a horse owner must be licensed one hour prior to post time of the first race on race day, which will reduce the number of late scratches that occur due to unlicensed owners attempting to enter horses into races. Finally, the changes improve the agency's responsiveness to the associations by allowing the stewards, instead of the executive secretary, to approve each association's Change of Trainer form.

The change to §311.102 establishes that a greyhound owner must be licensed one hour prior to post time of the first race on race day, which will reduce the number of late scratches that occur due to unlicensed owners attempting to enter horses into races. The changes to §311.104 reduces redundancy by allowing the Commission to waive the written and/or the practical test if it determines that the applicant already holds a current trainer's license issued by another pari-mutuel racing jurisdiction. The changes also clarify the responsibilities of trainers by incorporating language from the Association of Racing Commissioners International's model rules.

The changes to §311.105 clarify the requirements for apprentice jockeys by making those requirements equivalent to the requirements established for jockeys. The changes also require that jockeys and apprentice jockeys have a certificate of proficiency issued by a licensed starter.

The changes to §311.108 allow a trainer or owner to appoint a stable foreman or an assistant trainer as his or her authorized agent.

New §311.111 is adopted in conjunction with the repeal of §313.408, which is published elsewhere within this issue of the Texas Register. The changes in new §311.111 establish the licensing requirements for a jockey agent, and clarify the duties and responsibilities of the jockey agent.

The changes to §311.212 increase security by requiring each licensee to wear his or her license badge at all times while engaged in performing duties or while in a restricted area. The changes create a new exception for licensees who are performing duties as assistant starters.

The changes to §311.214 improve the Commission's ability to assist with the collection of debts owed by a licensee for services or supplies that are provided while the race animal is racing or in training at any licensed racing facility in Texas.

The changes to §311.216 improve safety by requiring licensees to wear A.S.T.M. approved safety helmets while mounted on a horse or holding a horse in a starting gate.

The changes to §311.301 improve the ability of agency staff to verify the legitimacy of medical prescriptions by requiring that prescriptions for dangerous drugs or controlled substances be issued by a physician who licensed in the United States and who is also authorized to prescribe such medications by the US Drug Enforcement Agency.

The Commission received one comment in response to the publication. The Texas Greyhound Association commented that paragraphs §311.104(k)(4) and §311.104(k)(13) were applicable to horse trainers, but because of differences between the horse racing and greyhound racing industries, these paragraphs did not apply well to greyhound trainers. The Commission agreed with the comment and responded by adopting §311.104 without these two paragraphs. All other proposed amendments and new rules are adopted without change to the proposals as published.

SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.1

The amendment is adopted under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing, and §7.02, which requires the commission to adopt categories of licenses for the various occupations and specify the qualifications and experience required for licensing in each category. The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

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Mark Fenner
General Counsel
Texas Racing Commission
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Proposal publication date: January 4, 2008
For further information, please call: (512) 833-6699

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DIVISION 2. OTHER LICENSES

16 TAC §311.52

The new rule is adopted under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing, and §7.02, which requires the commission to adopt categories of licenses for the various occupations and specify the qualifications and experience required for licensing in each category. The new rule implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §§311.101, 311.102, 311.104, 311.105, 311.108, 311.111

The amendments are adopted under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing, and §7.02, which requires the commission to adopt categories of licenses for the various occupations and specify the qualifications and experience required for licensing in each category. The amendments implement Texas Civil Statutes, Article 179e.

§311.104. Trainers.

(a) Licensing.

(1) Except as otherwise provided by this subsection, a trainer must obtain a trainer's license before the trainer may enter a horse or greyhound in a race. A trainer may enter a horse or greyhound in a stakes race without first obtaining a license, but must obtain a license before the horse or greyhound may start in the stakes race. Except as otherwise provided by this section, to be licensed by the Commission as a trainer, a person must:

(A) be at least 18 years old;

(B) satisfactorily complete a written examination prescribed by the Commission; and

(C) satisfactorily complete a practical examination prescribed by the Commission and administered by the stewards or racing judges or designee of the stewards or racing judges.

(2) The standard for passing the written examination must be printed on the examination. An applicant who fails the examination may not take the examination again before the 60th day after the date the applicant failed the examination. The Commission may waive the requirement of a written and/or practical examination for a person who has a current license issued by another pari-mutuel racing jurisdiction. If a person for whom the examination requirement was waived demonstrates an inability to adequately perform the duties of a trainer, through excessive injuries, rulings, or other behavior, the stewards or racing judges may require the person to take the written examination. If such a person fails the examination, the stewards or racing judges shall suspend the person's license for 60 days with reinstatement contingent upon passing the written examination .

(3) A trainer must use the trainer's legal name to be licensed as a trainer. A trainer who is also an owner may use a stable name or kennel name in the capacity of owner.

(4) To be licensed as an assistant trainer, a person must qualify in all respects for a trainer's license and be in the employ of a licensed trainer. An assistant trainer's license carries all the privileges and responsibilities of a trainer's license.

(b) Absolute Insurer.

(1) A trainer shall ensure the health and safety of each horse or greyhound that is in the care and custody of the trainer.

(2) A trainer shall ensure that a horse or greyhound that runs a race while in the care and custody of the trainer or kennel owner is free from all prohibited drugs, chemicals, or other substances.

(3) A trainer who allows a horse or greyhound to be brought to the paddock or lockout kennel warrants that the horse or greyhound:

(A) is qualified for the race;

(B) is ready to run;

(C) is in a physical condition to exert its best efforts; and

(D) is entered with the intent to win.

(c) Health Reports.

(1) A trainer shall immediately notify the Commission veterinarian or designee of unusual symptoms in a horse or greyhound that is in the trainer's care and custody.

(2) Not later than one hour after finding a dead horse or greyhound on association grounds, a trainer shall notify the stewards or racing judges and the Commission veterinarian, or their designee, of the death. In the absence of regulatory personnel, the trainer shall notify security personnel on the association grounds.

(d) Owner Suspended. A trainer may not retain a horse or greyhound in the trainer's care and custody if the Commission has suspended or revoked the license of the owner of the horse or greyhound.

(e) An individual who is licensed to work for a trainer is not permitted in the stable or kennel area on association grounds unless the licensee is employed by and doing work for a trainer on the association grounds. An individual in the stable or kennel area on association grounds who is not in the employ of and doing work for a trainer may be ejected from the stable or kennel area on the association grounds.

(f) Restrictions on Racing. A trainer may not enter a race animal or cause a race animal to be entered in a race at a racetrack if:

(1) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack; or

(2) the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

(g) Trainer Employees.

(1) A trainer may not employ an individual who is less than 16 years of age to work for the trainer on an association's grounds.

(2) A trainer may not employ a jockey to prevent the jockey from riding in a race.

(h) Trainer Absent. If a trainer must be absent because of illness or any other cause, the trainer shall appoint another licensed trainer to fulfill his or her duties, and promptly report the appointment to the stewards or racing judges for approval. The absent trainer and substitute trainer have joint responsibility for the condition of the race animals normally trained by the absent trainer.

(i) Suspended, Revoked or Ineligible Horse Trainers.

(1) A person may not assume the responsibilities of a horse trainer who is ineligible to be issued a license or whose license is suspended or revoked if the person is related to the trainer within the first degree of consanguinity or affinity.

(2) A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible horse trainer may not:

(A) receive any compensation regarding those horses from the suspended, revoked or ineligible trainer;

(B) pay any compensation regarding those horses to the suspended, revoked or ineligible trainer;

(C) solicit or accept a loan of anything of value from the suspended, revoked or ineligible trainer; or

(D) use the farm or individual name of the suspended, revoked or ineligible trainer when billing customers.

(3) A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer is directly responsible for all financial matters relating to the care, custody, or control of the horses.

(4) On request by the Commission, a suspended, revoked or ineligible trainer or a person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer shall permit the Commission to examine all financial or business records to ensure compliance with this section.

(j) Reporting to Clocker. When taking a horse onto a racetrack to work, a horse trainer or an assistant of the trainer shall report the horse's name and the distance to be worked to the morning clocker or an assistant clocker or shall instruct the jockey or exercise rider to transmit the information to the clocker or assistant clocker.

(k) Other Responsibilities - A trainer is responsible for:

(1) the condition and contents of stalls/kennels, tack rooms, feed rooms, and other areas which have been assigned by the association;

(2) maintaining the assigned stable/kennel area in a clean, neat and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable/kennel area;

(4) training all animals owned wholly or in part by the trainer that are participating at the race meeting;

(5) ensuring that, at the time of arrival at a licensed racetrack, each animal in the trainer's care is accompanied by a valid health certificate/certificate of veterinary inspection;

(6) using the services of those veterinarians licensed by the Commission to attend animals that are on association grounds;

(7) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any animal in the trainer's charge;

(8) immediately reporting to the stewards/judges and the official veterinarian if the trainer knows, or has cause to believe, that a animal in the trainer's custody, care or control has received any prohibited drugs or medication;

(9) maintaining a knowledge of the medication record and status of all animals in the trainer's care;

(10) ensuring the fitness of a animal to perform creditably at the distance entered; and

(11) ensuring that the trainer's horse is properly shod, bandaged and equipped.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200801229
Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

16 TAC §§311.212, 311.214, 311.216

The amendments are adopted under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing. The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
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SUBCHAPTER D. ALCOHOL AND DRUG TESTING
DIVISION 1. DRUGS

16 TAC §311.301

The amendment is adopted under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing. The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §313.111

The Texas Racing Commission adopts amendments to 16 TAC §313.111, Age Restrictions. These amendments allow horses older than twelve years to compete if they have finished in the top three of a race within the previous twelve months, or if the board of stewards review the horse's prior performance and gives specific authorization for the horse to compete. The proposed amendments were published in the January 4, 2008, edition of the *Texas Register* (33 TexReg 47). The Commission received no comments in response to the published notice. The amendments are adopted without change to the proposal as published.

The amendments are adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act. The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
General Counsel
Texas Racing Commission
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SUBCHAPTER D. RUNNING OF THE RACE
DIVISION 1. JOCKEYS

16 TAC §313.408

The Texas Racing Commission adopts the repeal of 16 TAC §313.408, Jockey Agents, without changes from the version published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 47). The Commission proposed the repeal because it has proposed and is adopting new §311.111, Jockey Agents, which is published elsewhere in this edition of the *Texas Register*. The Commission received no comments in response to the

published notice. The repeal is adopted without change to the proposal as published.

The repeal is adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act. The repeal implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
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Texas Racing Commission
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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D. DRUG TESTING
DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.363

The Texas Racing Commission adopts an amendment to 16 TAC §319.363, Testing for Total Carbon Dioxide. Section 319.363 relates to the testing of horses to detect illegal milkshaking, which is the illegal administration of a bicarbonate or other alkalinizing substance to enhance a race horse's performance. The change to §319.363 lowers the level at which a violation occurs from 39 millimoles per liter in a race horse serum specimen to 37 millimoles per liter. The proposed amendment was published in the January 4, 2008, edition of the *Texas Register* (33 TexReg 48). The Commission received no comments in response to the published notice. The amendment is adopted without change to the proposal as published.

The amendment is adopted under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing. The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 1. GENERAL PROVISIONS

16 TAC §321.407

The Texas Racing Commission adopts an amendment to 16 TAC §321.407, Approval of Wagering on Simulcast Import Races. Section 321.407 relates to the process by which a racetrack association requests approval to import a simulcast race signal and the factors the executive secretary considers in determining whether to approve the request. The adopted change to §321.407 addresses the minimum number of days in advance of the first race covered by a request that an association must submit its request for approval. The change reduces the minimum number of days from three to one.

The proposed amendments were published in the January 4, 2008, edition of the *Texas Register* (33 TexReg 48). The Commission received no comments in response to the published notice. The amendments are adopted without change to the proposal as published.

The amendments are adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing. The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER E. CONTESTED CASES

22 TAC §661.99

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.99, concerning the Sanctions and Penalty Matrix. The amendment is adopted without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9907) and will not be republished.

The additions to the Sanctions and Penalty Matrix will clarify sanctions for §661.55 regarding Surveying Firms Registration, §661.57 regarding Surveying Firms Compliance and §661.60 regarding Responsibility to the Board. Section 661.121 was removed from the Matrix because the rule was repealed and now incorporated in §661.55(f).

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801237
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: March 20, 2008
Proposal publication date: December 28, 2007
For further information, please call: (512) 239-5263

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT
SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.19

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.19, concerning Plat/Description/Report. The amendment is adopted without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9908) and will not be republished.

The amendment will further clarify the information that a land surveyor must include when furnishing plats, description or reports in regards to a survey that he has completed.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200801236
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5263

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §34.716, §34.726

The Commissioner of Insurance adopts amendments to §34.716, concerning the inspection, test and maintenance service of certain fire protection sprinkler systems, and new §34.726, concerning the establishment of the Fire Sprinkler Advisory Council to advise the State Fire Marshal regarding practices in the fire protection sprinkler system industry and the rules necessary to implement and administer Article 5.43-3 of the Insurance Code. The new and amended sections are adopted without changes to the proposed text published in the December 14, 2007 issue of the *Texas Register* (32 TexReg 9255).

REASONED JUSTIFICATION. The adopted amendment to §34.716(c) is necessary to extend the deadline from January 1, 2008, to January 1, 2009, as the date upon which an individual, performing the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, must hold an RME-General Inspector or RME-General license. The extension, recommended by the Texas Fire Sprinkler Contractor's Association and other registered fire sprinkler firms, is necessary because a sufficient number of individuals will not be licensed by the date currently specified in the rule. The time frame of one year and nine months allowed in the initial rule proved insufficient because the third party administering the required National Institute for Certification in Engineering Technologies (NICET) test to obtain the license only offered the test four times a year in twelve locations in Texas and restricted applicants that failed any part from retaking that part of the test for 120 days. Also, some applicants scheduled to take the NICET test were refused because of insufficient space at some test locations. In addition, the non-sprinkler sections of the test proved challenging; and training classes, sponsored by the sprinkler trade association, were only recently conducted to assist the applicants to study for these sections. Without the extension for the requirement that only individuals holding a current RME-General Inspector or RME-General license may perform the inspection, test and maintenance on certain fire protection sprinkler systems, only

a few individuals are appropriately licensed to conduct these inspections on and after the original January 1, 2008 deadline. This license was not previously required. The extension will result in the uninterrupted regular inspection and testing of the fire sprinkler systems in buildings until a sufficient number of individuals are issued a current RME-General Inspector or RME-General license.

Adopted new §34.726 is necessary to establish a Fire Sprinkler Advisory Council pursuant to the Insurance Code Article 5.43-3, §6 and the Government Code, Chapter 2110. Article 5.43-3, §6, specifies the duties and composition of the advisory council. Article 5.43-3, §6, is adopted as Insurance Code, §6003.101 and §6003.102 in the nonsubstantive revision of the Insurance Code, 80th Legislature, HB 2636, effective April 1, 2009. Government Code, §§2110.0012, 2110.005, and 2110.008 require state agencies to adopt rules to establish a state agency advisory council and to specify the advisory council's purpose, tasks, reporting requirements, and duration. Section 2110.0012 of the Government Code provides that for purposes of Chapter 2110 a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency or the agency has created the committee under state or federal law to advise the agency. In accordance with the Government Code Chapter 2110, the adopted new §34.726 creates the Fire Sprinkler Advisory Council and specifies the council's purpose and tasks, membership composition and terms of council members, reporting requirements, and period of duration of the council.

The Department received many comments in support of the proposed amendment to §34.716(c) to extend the deadline for requiring individuals to hold an RME-General Inspector or RME-General license to perform the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, and several comments in opposition to the proposed extension. The Department, however, did not make any changes to the proposed amendment to §34.716(c) as a result of the comments. The Department did not receive any comments concerning proposed §34.726 establishing the Fire Sprinkler Advisory Council.

HOW THE SECTIONS WILL FUNCTION. The amendment to §34.716 extends the date from January 1, 2008, to January 1, 2009, upon which an individual, performing the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, must hold an RME-General Inspector or RME-General license. New §34.726 establishes a Fire Sprinkler Advisory Council pursuant to the Insurance Code, Article 5.43-3, §6 and the Government Code, Chapter 2110. New §34.726(a) states the purpose and scope of the section. New §34.726(b) creates the Fire Sprinkler Advisory Council. New §34.726(c) outlines the purpose and tasks of the council. New §34.726(d) specifies the membership composition and terms of the council. New §34.726(e) specifies the reporting requirements of the council. New §34.726(f) specifies a duration of eight years for the council, from the effective date of the adoption of the new section, unless abolished earlier or extended to a later date by the Commissioner of Insurance.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§34.716(c). Support for amendment to extend licensing deadline.

Comment: A number of commenters agreed with the proposal to amend §34.716(c) to extend the deadline for requiring individuals to hold an RME-General Inspector or RME-General license to perform the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main. Their reasons included: (i) the NICET (National Institute for Certification in Engineering Technologies) test was offered in four cycles per year, which limited the number of times it could be taken resulting in an extended period of time (six months) for individuals to retake and pass all the elements of the test thereby prohibiting them from obtaining the license within the required time frame; (ii) in addition to the limited number of times the test was offered, on occasion the applicant was not permitted to take the test on the selected day in the cycle due to limited space at the test facility and, as a result, had to wait until the next cycle; (iii) the limited offering of the NICET test resulted in not enough time for individuals to pass the NICET test; (iv) without the deadline extension, there will be an insufficient number of licensed employees to meet the demand for the commissioning and inspection of fire sprinkler systems; and (v) property owners would see a considerable extra cost to inspect their sprinkler systems and may forgo the inspection because of the insufficient number of licensees. Two commenters agreed with the proposal to amend §34.716(c) but specified no reason.

Agency Response: The Department appreciates the supportive comments and agrees that these are sufficient reasons to support extending the licensing deadline.

Comment: Several commenters agreed with the proposal to amend §34.716(c), stating that sending applicants out of town to avoid the delay of waiting for the next cycle due to limited space at the local test facility proved prohibitively expensive. In some cases, this expenditure was made but there still was insufficient time to comply with the January 1, 2008 deadline.

Agency Response: The Department understands the commenters' concerns. At the time of the 2006 adoption of the rule that specified January 1, 2008 as the deadline to obtain the license, the Department was not aware that an applicant might have to incur substantial time and travel costs in order to comply with the deadline.

Comment: One commenter agreed with the proposal to amend §34.716(c) because the NICET test, required to obtain the license, included certain "obscure" elements that have minimal practical relevance to sprinkler inspection. The commenter stated that failure of these elements required the applicant to retake the test several times. Another commenter agreed with the proposal to amend §34.716(c) because, in the commenter's opinion, the test is very comprehensive, proving to be difficult for some individuals and requiring more than the allotted time to study and pass the material to obtain the license.

Agency Response: The Department agrees that some elements of the test may be difficult and/or not directly related to sprinkler inspection and may require extra time and study but believes that all of the elements are relevant to the overall capabilities of the applicant to perform the task. The Department agrees in part that the time frame allowed to obtain the license may have been insufficient due to the large number of applicants for the license and that the test is challenging. However, the NICET test was developed nationally and selected because it represents a minimum level of knowledge and training that is needed for individuals to reasonably inspect fire sprinkler systems.

§34.716(c). Opposition to amendment to extend licensing deadline.

Comment: Several commenters expressed opposition to the proposal to amend §34.716(c), stating that the time to pass the NICET test was sufficient for their firm and should have been sufficient for all others. These commenters stated that it is unfair to punish those that spent the time and money to comply by providing additional time for those that procrastinated.

Agency Response: The Department commends those applicants for their efforts in complying with the original time frame, but feels it is necessary to extend the date for other applicants that tried to comply but due to circumstances outside their control, such as the limited space available at the test centers, were not permitted to complete the NICET test. Many who supported the extension felt they made an honest effort to meet the time frame, passed many of the elements of the test, and were very close to completing the test requirements except for a few elements. The time and effort spent by those who obtained the license within the original time frame will not be lost since the license will still be required on and after January 1, 2009. As explained previously in this adoption, the Department's reasons for extending the licensing deadline are: (i) a sufficient number of individuals will not be licensed by the January 1, 2008 date currently specified in the rule; (ii) the time frame of one year and nine months allowed in the initial rule proved insufficient because the third party administering the required test to obtain the license only offered the test four times a year in twelve locations in Texas and restricted applicants that failed any part from retaking that part of the test for 120 days which due to the limited offering of the test, four times a year at a specific location, is effectively 180 days; (iii) some applicants scheduled to take the test were refused because of insufficient space at some test locations; (iv) the non-sprinkler sections of the test proved challenging and training classes, sponsored by the sprinkler trade association, were only recently conducted to assist the applicants to study for these sections; and (v) the extension will result in the uninterrupted regular inspection and testing of the fire sprinkler systems in buildings until a sufficient number of individuals are issued a current RME-General Inspector or RME-General license.

Comment: Two commenters stated that the justification for the proposed rule to amend §34.716(c) stated that NICET required six months before permitting a re-test of failed elements when in fact NICET only requires 120 days. In addition the test is offered nationwide; and the applicant could have traveled to other states to expedite the process.

Agency Response: The Department agrees in part. NICET only requires 120 days before re-taking the test. However, since the test is offered in four cycles (usually 90 days between each test) at any one location, the next available test date, after the initial test, at the same local test site as the initial test would be in 90 days, 180 days, 270 days, or 360 days. Therefore, after the applicant waits the required 120 days after the initial test, the next closest test date that could be scheduled to re-take the test would be 180 days after the initial test. Although the applicant has the option to re-take the test at a different test site from the initial test, which would have to be either in another major city in Texas or out of state, in a shorter period than the 180 days, the Department did not anticipate or intend applicants to incur substantial time and travel expenses to take or re-take the test when the January 1, 2008 deadline date was adopted.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

Against §34.716(c): Eight individuals.

For §34.716(c): Twenty-two individuals and the Texas Fire Sprinkler Contractors Association.

STATUTORY AUTHORITY. The amendments to §34.716 and new §34.726 are adopted under the Government Code, §2110.005 and §2110.008 and the Insurance Code, Article 5.43-3, §6 and §3(a), and §36.001. The Government Code, §2110.005, requires a state agency that is advised by an advisory committee to adopt rules that state the purpose and tasks of the committee and that describe the manner in which the committee will report to the agency. Section 2110.008(b) of the Government Code provides that, unless a state agency designates a different date for automatic abolition of the committee, the committee is automatically abolished on the later of September 1, 2005 or the fourth anniversary of the date of its creation. The Government Code, §2110.008(a), provides that a state agency that has established an advisory committee may designate the date on which the committee will automatically be abolished, that the designation must be by rule, and that the committee may continue in existence after that date only if the agency amends the rule to provide for a different abolishment date. The Insurance Code, Article 5.43-3, §6 specifies the duties and composition of the advisory council, and provides that the State Firemen's and Fire Marshals' Association of Texas may, on request by the Commissioner, recommend a volunteer fire fighter for appointment to the advisory council. The Insurance Code, Article 5.43-3, §3(a) authorizes the Commissioner to adopt rules as necessary to administer Article 5.43-3. The Insurance Code, §36.001, provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801258
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 23, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 93. YOUTH RIGHTS AND REMEDIES

The Texas Youth Commission simultaneously adopts the repeal of §93.31, concerning Complaint Resolution System and new §93.31, concerning Youth Grievance System. The repeal is adopted without changes to the proposal as published in the

August 24, 2007, issue of the *Texas Register* (32 TexReg 5328). The new rule is adopted with changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5328). Changes to the proposed text are indicated in the summary of comments and responses below.

The justification for the repeal and new rule is the safety and positive adjustment of youth in the commission's custody through enhancement of measures for reporting and addressing grievances.

The new rule will provide additional methods for filing grievances directly with off-site staff, as well as provide for staff conference requests whereby youth may informally discuss issues with a staff member of the youth's choosing. The new rule will also provide enhanced control measures to limit the potential for interference with the youth grievance system.

TYC received comments recommending modifications to the proposed rule from Texas Appleseed, Texas Legal Services Center, Advocacy Incorporated, and the Texas Criminal Justice Coalition. The comments are summarized below, along with the commission's responses.

Comment: There is too much local level control in developing a complaint filing procedure, which may cause youth to question the confidentiality of complaints.

Response: TYC believes there are sufficient controls established by rule concerning the procedure for filing complaints. The methods for filing, managing, and resolving grievances are standardized for all facilities and programs. Certain allowances for local decisions concerning the time, place, and manner of grievance submission are necessary due to the differing physical plant configurations and the local master schedule. No changes were made as a result of the comment.

Comment: There is too little detail on how the Incident Reporting Center plans to investigate youth complaints.

Response: The Incident Reporting Center is not responsible for investigating youth grievances, but is simply one vehicle for a person to submit a grievance directly to central office staff. TYC will implement operating procedures concerning the coordination between the Incident Reporting Center and the staff responsible for investigating youth grievances. No changes were made as a result of the comment.

Comment: Since a staff member "not directly involved in the grievance" has authority to implement a corrective measure, but may be located at the same facility, youth will still be vulnerable to retaliation.

Response: In some cases, a local staff member is in the best position to provide a timely and responsive resolution. In other cases, the nature of the grievance will require that an off-site staff member be assigned to resolve the grievance. The rule cannot address the unique circumstances of every complaint that may be filed and therefore does not specify the location of the staff member assigned. Staff responsible for assigning grievances will be trained in how to identify those cases requiring off-site resolution and will have discretion to appropriately assign grievances. However, in all cases, including those initially assigned to a local staff member for resolution, a grievant retains the ability to appeal the resolution to off-site staff. No changes were made as a result of the comment.

Comment: Provision of consequences for retaliation is unchanged from the former policy. A more hard line stance should be taken against this abusive practice.

Response: The former policy did not address consequences for retaliation; it simply stated that retaliation is prohibited. The proposed rule establishes that employees found to have retaliated against a grievant or a person involved in the investigation of a grievance are subject to termination of employment. No changes were made to the proposed rule as a result of the comment. However, the proposed rule strengthens the language found in the former rule.

Comment: The rule does not address access to the grievance process for youth assigned to the security unit.

Response: The rule establishes that all youth, regardless of placement within a facility, must have access to the grievance process. TYC will implement management procedures establishing adequate access to the grievance process for youth housed in the security unit. No changes were made as a result of the comment.

Comment: TYC should develop a policy giving youth access to independent legal counsel when grievances are related to violations of constitutional or federal statutory rights and outline the parameters of the investigation process when youth are represented by counsel. Youth should have their attorney present before questioning.

Response: Current rules prohibit any restriction on youth access to or communications with independent legal counsel. Youth also have access to the Office of Independent Ombudsman for assistance in addressing grievances. Additionally, the procedures for investigation of allegations of abuse, neglect, exploitation, or other criminal activity are addressed separately within TYC's rules and policies and will not be included in this rule. No changes were made as a result of the comment.

Comment: TYC should consider stronger use of youth advocates or caseworkers to assist youth in the grievance process. These advocates could also be youth advocates and should be able to "represent" youth who have filed grievances.

Response: TYC will implement management procedures governing the responsibilities of staff members who will assist youth with the grievance process. No changes were made as a result of the comment.

Comment: TYC should provide checkbox options on the grievance forms for the grievant to select whether or not to make the information available to the TYC Board and to the public.

Response: TYC does not currently operate under the leadership of a Board and believes allowing the public release of youth complaints, with or without personally identifiable information, could potentially violate laws concerning the confidentiality of youth records. TYC's rules regarding access to youth information are found at 37 TAC §§81.41, 99.1, and 99.9. No changes were made as a result of the comment.

Comment: Proposed 37 TAC §93.31(d)(1)(C)(ii) as written should be stricken and replaced with: "Staff shall assure that each youth has a supply of grievance forms."

Response: TYC believes that such a practice would jeopardize the ability to identify potential interference in the filing of grievances. Distribution of pre-numbered grievance forms by a peer on an as-needed basis, as described in subsection (d)(1)(C)(ii), allows for reconciling the number of forms issued to youth and

those received by designated staff. Such audits of grievance form numbers will be an effective tool in identifying any grievances submitted by youth but not received by the designated staff. No changes were made as a result of the comment.

Comment: Add a further clause to state: "All grievances shall be copied to the ombudsman who shall maintain them in confidence unless the grievant permits the ombudsman to share the grievance with others as agreed between the grievant and the ombudsman, to the extent the law does not otherwise require the ombudsman to divulge the grievance or information in it."

Response: The Independent Office of the Ombudsman currently has access to the database containing all youth grievances, and operates independently from TYC under its own policies and procedures. No changes were made as a result of the comment.

Comment: Add a clause to state: "Grievants shall be allowed assistance in presenting their grievance in person and by phone, including the assistance of family members and such legal counsel as may be available to the grievant."

Response: The rule as proposed allows for grievances to be filed on behalf of youth by third parties. Access to and communication with legal counsel is separately addressed within TYC's rules. No changes were made as a result of the comment.

Comment: Add a clause to state: "Grievances shall not be heard by an employee who is the subject of a grievance from the grievant nor by a supervisor of such an employee. Grievances may be heard by videoconference."

Response: The rule as proposed prohibits an employee who is directly involved in the grievance from being assigned to resolve the grievance. TYC does not believe supervisors should be categorically excluded from the resolution process, as this may inhibit the timeliness and responsiveness of the grievance resolution process. Granting the right to submit grievances by video may hold potential as a future application; however, there are barriers such as resource requirements, confidentiality issues, and other concerns relating to equal access that must be considered. No changes were made as a result of the comment.

Comment: The policy should contain assurances for youth on the issues of confidentiality, objectivity, accountability and access - in an additional policy statement.

Response: TYC believes these issues are adequately addressed in the rule, and will further emphasize the importance of these issues during training. TYC will implement management procedures that establish accountability systems for the grievance system. No changes were made as a result of the comment.

Comment: It is not clear whether or not this policy is meant to operate separate and apart from the Office of Inspector General, or the Office of the Ombudsman. If this grievance process is meant to address only specific areas or issues, the rule should contain explicit language concerning what types of complaints would be best directed to the other respective offices. Also, language concerning the linkage and coordination, if any, between other complaint processes and this complaint process would help reduce the confusion for youth and families between the different complaint resolution systems and give alternatives to them with respect to their concerns.

Response: The Office of Inspector General investigates allegations of criminal behavior whether reported through the grievance system or otherwise. The Ombudsman operates independently of TYC and under its own rules and procedures. A clarifying statement was added to subsection (a)(1) relating to referral to law enforcement agencies when grievances allege violations of law.

Comment: There is no structure built into the informal methods of dispute resolution (conferences). Add language: "Youth will have access to a "clearly" designated, independent, objective person" outside of the direct care staff who "shall" be responsible for resolving disputes whether through informal discussions or otherwise and who "shall" make him/herself "affirmatively" available on the dormitories/floor/units on a frequent and consistent basis to receive complaints." TYC needs to ensure the availability of non-direct care staff, i.e., impartial mediators, to engage in these informal discussions or conferences. If these staff are in the ombudsman's office, then the linkages need to specify that linkage or coordination.

Response: TYC believes that a youth should be able to meet with any staff member of the youth's choosing, regardless of whether or not the staff member has direct care duties. There is no requirement that a youth select the staff member with whom the youth may have a dispute. Should a youth have a dispute with a staff member, the youth is free to select an impartial third party for an informal conference. Limiting the staff who are responsible and available for hearing informal grievances could potentially lengthen the resolution process. TYC will implement management procedures that address staff responsibilities with respect to assisting youth with the grievance process, including facilitation of informal conference requests. No changes were made as a result of the comment.

Comment: The language should be changed to indicate that specific times and places shall be designated for youth to file complaints and/or to get the assistance needed.

Response: TYC believes that the language as proposed is sufficient. The rule requires all TYC facilities to designate times and places for the submission of grievances. Additionally, the Incident Reporting Center is available 24 hours per day to receive grievances. No changes were made as a result of the comment.

Comment: Add that any youth or parent/guardian who needs a reasonable accommodation to file a grievance, as a result of a disability, may request it and describe the manner in which the individual may request the accommodation.

Response: In addition to establishing several methods by which grievances may be submitted, the rule provides that a staff member will be designated and available at each facility to assist any person with filing a grievance. Although not stated in the proposed rule text, these staff members will assist persons with disabilities who request accommodations in order to file a grievance. Subsection (b)(2) has been amended to reflect this responsibility.

Comment: Regarding retaliation, add language forbidding staff not involved in the grievance process to question, discuss, etc. any grievance a youth may wish to file or have filed. The rule does not go far enough to provide safeguards so staff do not abuse their discretion or use this process to harass, intimidate, or discipline youth. Youth and/or parents/guardians experiencing retaliation by staff should be directed to the OIG or other appropriate offices or law enforcement for action with respect to the retaliation complaint.

Response: As established in subsection (b)(4), TYC does not tolerate interference or retaliation regarding the filing of griev-

ances. Employees found to have retaliated against a grievant or a person involved in the investigation of a grievance are subject to termination of employment. No changes were made as a result of the comment.

Comment: The existing complaint process does not provide enough privacy to youth in submitting written grievances as the lock boxes are in open, common areas where anyone can see a youth submit a grievance. There is also no privacy in youth having to ask for a grievance form. Greater emphasis should be placed on providing accessible but private locations for these activities. Telephone access to make grievances known should be confidential. Youth should not have to divulge the purpose or contact information of the person to be called. Vague terms ("subject to limitations on time, place and manner") do not encourage or build a more responsive grievance process for youth. Youth should have access to phones to call in grievances at all times.

Response: TYC strives to operate the grievance system in a manner that balances the need for both confidentiality and security. Drop boxes are generally located in areas which discourage tampering and are easily accessible to all youth. Additionally, grievance forms are simply one vehicle by which youth may file grievances. Youth may also file grievances by letter, which staff may not read or censor prior to depositing for delivery, or by telephone. Youth access to telephones is addressed separately in TYC's rules. No changes were made as a result of this comment.

Comment: Confirmation that a grievance has been received should be made in writing. If the youth, parent/guardian is represented by counsel, no communication in relation to the grievance or issues in the grievance should occur without consultation with the individual's legal representative.

Response: TYC will implement a process to confirm receipt which balances the goals of responsiveness, cost efficiency, and timeliness. TYC will address and accommodate any reasonable request from a grievant's legal representative so long as it does not interfere with the timely resolution of grievances. TYC currently has in place rules and procedures concerning private communication between a youth and his/her attorney. No changes were made as a result of this comment.

Comment: Add language explaining what to do if a youth wishes to withdraw a grievance, and this should be done in writing, in the presence of the grievance staff.

Response: A statement reflecting current practice has been added to subsection (d)(1)(C), requiring that any youth who wishes to withdraw a grievance form must do so in the presence of, at a minimum, the youth grievance representative.

Comment: The informal conference procedure should be documented in some fashion, with participants signing the documentation. Timelines should be built in to avoid unnecessary delays or inaction on the part of staff in addressing youth concerns and/or necessitating the youth taking more formal grievance steps.

Response: TYC will implement management procedures regarding documentation requirements and timelines for informal conferences. No changes were made to the rule as a result of the comment.

Comment: Another youth should not be used to distribute grievance forms because there is a potential for conflict between that youth and the one filing the grievance. This practice also exposes the designated youth grievance clerk to unnecessary harassment.

Response: TYC believes that there is a greater potential for intimidation if youth were required to obtain forms from staff. And as mentioned previously in this adoption notice, TYC believes providing each youth a supply of forms would not provide adequate protections against interference. If a youth feels intimidated by the youth grievance clerk or any other peer, he/she has other means available by which to file a grievance. No changes were made to the rule as a result of the comment.

Comment: Change the language to "daily" collection, review and assignment of grievances. The words "promptness" and "substantial loss or harm" are not defined and should be, as this results in significant hardship on youth in the initial hours and days following grievance submission.

Response: Daily collection is currently the TYC standard. In certain limited cases, due to the type of program and staffing levels, daily collection may not always be possible on weekends. Management procedures will specify how collection is to be accomplished in such cases. However, as noted in the rule, the Incident Reporting Center is available 24 hours per day, seven days per week to accept grievances. Due to the uniqueness of each grievance and the relevant circumstances, TYC believes determinations as to expedited resolution are best made on a case-by-case basis in the discretion of staff members trained to identify such issues, and the proposed language is sufficient for this purpose. No changes were made as a result of the comment.

Comment: Priority should be given to grievances involving excessive use of force, inappropriate use of chemical agents, physical or sexual injury or abuse, inappropriate conduct by staff, imposition of severe and lengthy discipline or restrictions or to other medical emergencies.

Response: As noted in the rule, grievances will be screened to identify those requiring expedited resolution. Separate rules, policies, and procedures govern TYC's investigatory process regarding violations of law or policy, as well as medical emergencies. No changes were made as a result of the comment.

Comment: Concerning appeals, this policy fails to make reference to 37 TAC §93.53, which also sets guidelines for appeals. 37 TAC §93.31 and §93.53 are inconsistent regarding what can be directly appealed to the Executive Director, which may leave youth without recourse if the grievance does not receive a timely response.

Response: TYC agrees that the rule should reference 37 TAC §93.53 and has added a reference in subsection (d)(3)(B). Section 93.53 is not intended to limit a grievant's appeal rights as established in 37 TAC §93.31, including the right to file a direct appeal to the executive director concerning lack of timely response to a grievance.

Comment: The rule is not clear concerning the timeline for a written response to youth grievances, how many levels of appeal are required, and the timelines for appeal responses.

Response: Although implied by the right to appeal the lack of response within 15 work days directly to the executive director, the rule does not set a deadline for initial response. TYC agrees the rule should do so; therefore subsection (d)(2)(B) has been amended to include a 15-workday deadline for response to a grievance. The rule also failed to set a deadline for direct appeal to the executive director in the event of lack of response to

an appeal; therefore subsection (d)(3)(C) has been amended to provide for such an appeal if no response to the appeal is received within 15 work days.

Comment: The policy has not been adequately strengthened or adequately standardized and lacks enforcement language.

Response: TYC believes that additional controls have been incorporated to both strengthen and standardize the process. The policy now requires secure drop boxes at all TYC facilities, provides grievants the ability to submit grievances by phone to the Incident Reporting Center 24 hours per day, and explicitly states that interference or retaliation is grounds for termination of employment. No changes were made as a result of the comment.

Comment: The lack of details in the rule pertaining to the implementation of the grievance system is troubling and excludes the public from sufficient participation in the development of agency policies. A system where only general information is subjected to public input allows TYC to operate behind closed doors with no requirement of notification to the *Texas Register*.

Response: TYC must operate and manage programs that are responsive to continuously and at times rapidly changing conditions, and therefore places certain operational and management processes in procedures that are not subject to the public rulemaking process. With respect to the youth grievance system, TYC is currently developing plans to disseminate additional information on the operation, staffing, and management of the system that, while not subject to public rulemaking, will be transparent and publicly available.

37 TAC §93.31

The repeal is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2008.

TRD-200801130
Richard Nedelkoff
Conservator
Texas Youth Commission
Effective date: April 1, 2008
Proposal publication date: August 24, 2007
For further information, please call: (512) 424-6475

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37 TAC §93.31

The new rule is adopted under the Human Resources Code, §61.045, which assigns to the commission the responsibility for the welfare and rehabilitation of the children in its care, and §61.0422, which requires the commission to keep information about each written complaint filed with the commission by a child receiving services from the commission or the child's parent or guardian.

§93.31. Youth Grievance System.

(a) Policy.

(1) Youth, parents or guardians of youth, and youth advocates have a right to file grievances concerning the care, treatment, services, or conditions provided for youth under the jurisdiction of the Texas Youth Commission (TYC). TYC will resolve grievances in a prompt, fair, and thorough manner; however, grievances alleging criminal violations will be referred to law enforcement for investigation and disposition.

(2) TYC recognizes that informal discussions between staff and youth are a key element in resolving issues or concerns at the earliest stage and contribute to a positive facility culture. TYC will make staff available to meet with youth whenever possible, limited only by consideration for facility order and the safety of youth and staff.

(b) General Rules.

(1) There is no limitation on the number or subject matter of grievances a person is permitted to file.

(2) Each residential facility and parole office will provide a time, place, and manner in which youth, parents/guardians, or youth advocates may file grievances and a staff member who is available to provide assistance in writing and filing grievances. The staff member will assist individuals with disabilities who request accommodations in order to access the youth grievance system.

(3) In residential facilities, reasonable restrictions may be imposed on the time, place, and manner of submission of grievances filed by youth to preserve order and maintain attention during instructional or treatment activities.

(4) Retaliation or interference by staff concerning the filing or resolution of grievances will not be tolerated and is grounds for disciplinary action up to and including termination of employment.

(5) To the extent possible, grievances will remain confidential. The identity of a person filing a grievance will not be shared with staff members other than those necessary to resolve the grievance. Youth files will not contain any reference to the filing of grievances.

(6) Youth will be informed of the system for filing and resolving grievances upon arrival at each placement. Notices containing information on the grievance system will be posted in English and Spanish in conspicuous areas throughout residential facilities and parole offices. Parents/guardians will be provided information on the grievance resolution system and local contact information upon a child's admission to TYC and each subsequent placement.

(7) Persons with limited English proficiency may file grievances in languages other than English.

(8) TYC will provide confirmation of receipt, including a tracking number, to grievants having the legal right to access confidential youth information.

(9) Upon written request, a parent/guardian of a youth under 18 years of age will be provided with a summary of grievances filed by his/her child. A youth 18 years of age or older must provide consent in order to release a grievance summary to his/her parent/guardian.

(c) Youth Requests for Conference with Staff.

(1) Youth assigned to residential facilities may submit a written request for a conference with any staff member assigned to his/her facility as an informal means of addressing issues or concerns. Conferences with youth will be scheduled at the earliest opportunity that does not jeopardize youth or staff safety, facility order, or an ongoing investigation. Youth will be notified in cases where the request cannot be honored promptly.

(2) A youth may elect to file a grievance if he/she is dissatisfied with the result of the staff conference or the issue(s) raised in connection with the conference request cannot be resolved by his/her selected staff member. However, in no case will a youth be required to submit a request for conference as a preliminary step prior to submitting a grievance.

(d) Grievances.

(1) Methods for Filing a Grievance.

(A) Incident Reporting Center. Any person may submit a grievance to the TYC Incident Reporting Center (IRC) by telephone, email, fax, or postal service. See TYC's website for contact information. Subject to limitations on time, place, and manner, a youth in a residential placement will be allowed confidential telephone access in order to contact the IRC.

(B) In-Person to TYC Staff. Any person who is unable or unwilling to submit a grievance in writing may verbally communicate a grievance to TYC staff.

(C) Youth Grievance Forms.

(i) All youth under TYC jurisdiction must have access to pre-numbered grievance forms.

(ii) In residential facilities, a youth will be selected in each living unit or area to distribute grievance forms.

(iii) In residential facilities, secure drop boxes will be provided in easily accessible locations for youth to submit completed grievance forms. Access to the drop boxes is restricted to staff members designated by the executive director or designee.

(iv) A youth will be provided with a copy of each grievance he/she submits.

(v) A youth who wishes to withdraw a grievance form must do so in writing in the presence of, at a minimum, the youth responsible for distributing grievance forms.

(2) Resolution of a Grievance.

(A) Grievances will be promptly collected, reviewed and assigned for response. Grievances will be screened to identify issues which require expedited resolution in order to avoid substantial loss or harm if delayed.

(B) Each grievance will be assigned to a staff member who is not directly involved in the grievance and has the authority to implement an appropriate corrective measure or has knowledge or access to provide clarifying information. The assigned staff member will provide a written response to the grievant within 15 workdays of submission of the grievance.

(3) Appeal of a Grievance Resolution.

(A) A grievant may file an appeal if dissatisfied with the response. TYC will designate a staff member to provide a written response to the appeal.

(B) Pursuant to §93.53 of this title, a grievant may submit an appeal to the executive director or designee if dissatisfied with the appeal response.

(C) A grievant may submit a direct appeal to the executive director or designee if no written response is received within 15 workdays after submitting a grievance or an appeal of a grievance response.

(D) An appeal to the executive director or designee exhausts all administrative remedies on the issue(s) raised in the grievance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2008.

TRD-200801131
Richard Nedelkoff
Conservator
Texas Youth Commission
Effective date: April 1, 2008
Proposal publication date: August 24, 2007
For further information, please call: (512) 424-6475

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER B. MORTGAGE FINANCING

40 TAC §§175.54, 175.56, 175.58, 175.59, 175.62

The Veterans Land Board of the State of Texas (the "Board") adopts amendments to Title 40, Part 5, Chapter 175, Subchapter B of the Texas Administrative Code, §175.54 (relating to "Protection of Security Interests"), §175.56 (relating to "Fees, Loan Amount, Interest Rate, and Down Payment"), §175.58 (relating to "Removal of Material Assets, Releases, and Payment in Full"), §175.59 (relating to "Easements and Mineral Leases"), and §175.62 (relating to "Trustee's Sale"), of the General Rules of the Veterans Land Board without changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8432). The adopted rules will not be republished. The amendment to §175.54 is adopted to eliminate any requirement for private mortgage insurance as a result of the amendment to §161.503 of the Texas Natural Resources Code. The other amendments are adopted to eliminate certain requirements the board finds unnecessary, and to allow the Board to require a down payment that conforms to its credit, underwriting, and appraisal standards.

Section 161.503(d) of the Texas Natural Resources Code authorizes the Board to adopt rules to implement Subchapter K loans, known as the mortgage loans. The Board finds that it serves the best interest of the programs if the rules are changed as proposed and as set forth in the above referenced issue of the *Texas Register*.

No comments were received regarding the amendment.

The amendments are adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.218, 161.222, 161.233, 161.283, and 161.503. These sections authorize the Board to adopt rules that it considers

necessary and advisable for the Land Program and the Land Mortgage Program.

The adopted amendments affect Subchapter K of Chapter 161 of the Texas Natural Resources Code, §161.501 through §161.515.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 27, 2008.

TRD-200801176
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
Veterans Land Board
Effective date: March 18, 2008
Proposal publication date: November 23, 2007
For further information, please call: (512) 475-1859

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CHAPTER 176. VETERANS HOMES

40 TAC §176.1

The State of Texas Veterans Land Board (the "Board") adopts the proposed amendments to Title 40, Part 5, Chapter 176, §176.1, relating to Definitions as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7034) without changes and will not be republished. The adopted amendments updated the reference to the state agency that regulates the Texas State Veterans Home program. As currently written this rule refers to the Texas Department of Human Services or TDHS. The 78th Legislature reorganized TDHS. The organization that now regulates the nursing home industry under Chapter 242, Human Resources Code, is known as the Texas Department of Aging and Disability Services or DADS. The adopted amendment to 40 TAC §176.1 reflects that name change.

No comments were received regarding any of the adopted amendments to §176.1.

Amendments to 40 TAC §176.1 are adopted under Texas Natural Resources Code, §164.004, which provides the TVLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 019, Texas Natural Resources Code.

The adopted amendment to §176.1 will affect §164.005 of the Texas Natural Resource Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2008.

TRD-200801179
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
Texas Veterans Land Board
Effective date: March 19, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 475-1859

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40 TAC §176.7

The State of Texas Veterans Land Board (the "Board") adopts the proposed amendments to Title 40, Part 5, Chapter 176, §176.7, regarding the admissions requirements to the Texas State Veterans Homes Program as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7034) without changes and will not be republished. The adopted amendments clarified the admission criteria and allow for the admission of otherwise eligible residents currently residing outside of the state of Texas.

The adopted amendments proposed to subsection (a) delete language that has been determined no longer necessary for admission requirements. The added language to this subsection clearly identifies the purpose for this rule. The adopted amendments also re-designated the subsequent subsections to add to the overall clarity of this rule.

The adopted amendments to new designated subsection (c) delete redundant language that defines the term veteran for the purpose of this rule. In newly designated subsection (b), "veteran" is defined in accordance with the Texas Natural Resources Code, §161.001(a)(7). Utilizing this definition continues to make uniform the term "veteran" throughout the Board's programs.

The adopted amendments add new subsection (c)(4) that provides for the admission of otherwise eligible veterans who currently reside outside the state of Texas. Under the current rule, §176.7, the residency requirement for admission into the Homes requires that the applicant is "a bona fide resident of Texas at the time of application for admission or was a bona fide resident of Texas at the time of enlistment, induction, commissioning, appointment or drafting, or who has resided in Texas continuously for at least one year immediately before applying for admission." The Board received several inquiries from families residing in Texas who sought admission into the Texas State Veterans Homes (Homes) for veteran family members residing outside of the state of Texas. These veterans met all eligibility requirements for admission into the Homes except for the residency requirement established under §176.7. The families were requesting admission to bring their family member closer to home for the provision of the veteran's skilled nursing care needs. Approximately a year ago, the Board passed a Resolution allowing the Texas State Veterans Home Program (Program) to waive the residency requirement for applicants residing out of state that would otherwise be eligible to reside in the Homes. The Board wanted to ensure that the Program would utilize this provision before making the waiver of residency part of the admission criteria as established in §176.7 under the rules.

Over the past year, the Program has admitted 12 residents under the Resolution's provisions. The Board concluded that this represented a great need for the change in the residency requirements under certain circumstances. The adopted amendment for subsection (c)(4) fulfills that need.

Finally, the adopted amendments delete current subsection (c)(9). The Program staff determined that criteria no longer applied to the Program's admission policy.

No comments were received regarding any of the proposed amendments to §176.7.

Amendments to 40 TAC §176.7 are adopted under Texas Natural Resources Code, §164.004, which provides the TVLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 019, Texas Natural Resources Code.

The adopted amendment to §176.7 will affect §164.005 of the Texas Natural Resource Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2008.

TRD-200801180
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
Texas Veterans Land Board
Effective date: March 19, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 475-1859

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PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 877. GRANT AWARDS

40 TAC §§877.1, 877.3, 877.4

The Texas Council for Developmental Disabilities (Council) adopts amendments to 40 TAC §§877.1, 877.3, and 877.4 concerning grants awarded to public or private organizations. These rules are adopted without change to the text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 70) and will not be republished.

The amendments clarify that project specific independent reviews and other procedures may be required of Council grant recipients who are not otherwise required to have an annual independent audit by federal or state requirements. The amendments also clarify procedures for Council grantees to request reconsideration of a suspension or termination of funding.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Human Resources Code §112.020(b)(1) which provides the Council with authority to adopt rules as necessary to implement the Council's duties and responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801185
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Effective date: March 20, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 437-5442

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 6. STATE INFRASTRUCTURE BANK

SUBCHAPTER E. FINANCIAL ASSISTANCE AGREEMENTS

43 TAC §6.42, §6.45

The Texas Department of Transportation (department) adopts amendments to §6.42, performance of work, and §6.45, financial and credit requirements, concerning State Infrastructure Bank financial assistance agreements. The amendments to §6.42 are adopted with changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8715) and will be republished. The amendments to §6.45 are adopted without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The State Infrastructure Bank (SIB) is an account within the state highway fund established under Transportation Code, Chapter 222, Subchapter D, as authorized by Title 23, United States Code Annotated, Section 610. The commission uses money deposited in the SIB to provide financial assistance to public and private entities, generally in the form of loans, for authorized transportation projects. The amendments seek to reduce the administrative costs and burdens of applicants and the department imposed through SIB financial assistance agreements under the current rules, thus ensuring that financial assistance proceeds and project contributions from applicants are dedicated to successful completion of the project and repayment of the financial assistance. The amendments facilitate a more thorough oversight by the department of recipients' use of financial assistance and clarify that financial assistance proceeds cannot be used to pay the costs of a transportation project incurred before the financial assistance agreement is fully executed.

Amendments to §6.42(a)(1) clarify that financial assistance proceeds cannot be used to pay for project costs incurred prior to execution of the financial assistance agreement where project work is performed by the department. These amendments will facilitate more thorough oversight by the department of a recipients' use of financial assistance by expressly limiting costs paid with financial assistance proceeds to project costs incurred after the financial assistance agreement is fully executed and, therefore, limit the costs that the department must monitor.

Amendments to §6.42(b)(3) eliminate the requirement that an applicant for financial assistance must annually have a certified public accountant perform a full audit of project records and accounts at the applicant's cost. Section 6.42(b)(3) requires applicants to submit an annual report to the department detailing project expenditures, providing an accounting of financial assistance proceeds, and providing any other information requested by the department. In addition, and to increase flexibility, new paragraph (4) of §6.42(b) requires applicants to submit additional reports containing the same or similar information as that required by §6.42(b)(3) or other information related to project expenditures, if requested by the department. Together, the amendments should reduce the administrative costs and burdens of applicants and the department imposed through SIB

financial assistance agreements under the current rules, thus ensuring that financial assistance proceeds and project contributions from applicants are dedicated to successful completion of the project and repayment of the financial assistance. The amendments will facilitate more thorough oversight by the department of recipients' use of financial assistance through utilization of less formal reporting requirements that applicants are better prepared to satisfy, while still providing sufficient data for the department to conduct oversight.

Amendments to §6.42(b)(5) add that reports required under a financial assistance agreement must also be provided to the department after completion of the project, maintaining consistency with the removal of an annual audit requirement. These amendments will ensure that any reports that were prepared by the applicant during construction of the project will be submitted to the department for its records after the project is completed.

New §6.42(b)(6) clarifies that financial assistance proceeds cannot be used to pay for project costs incurred prior to execution of the financial assistance agreement where project work is performed by the applicant. This amendment will facilitate more thorough oversight by the department of recipients' use of financial assistance by expressly limiting costs that can be paid with financial assistance proceeds to project costs incurred after the financial assistance agreement is fully executed and, therefore, limit the costs that the department must monitor.

Amendments to §6.45(4) add that reports required under a financial assistance agreement must be provided to the department, which maintains consistency with the removal of an annual audit requirement while maintaining the department's ability to request a full audit. This amendment will ensure that the applicant submits to the department any reports that are required by law or requested by the department, and it maintains the department's ability to request an audit from the applicant.

COMMENTS

No comments on the proposed amendments were received. The department made one grammatical change in §6.42(b)(3) to improve readability.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and, more specifically, Transportation Code, §222.077, which requires the commission to adopt rules governing the SIB.

CROSS REFERENCE TO STATUTE

Transportation Code, §222.072; Transportation Code, §222.073; Transportation Code, §222.074; Transportation Code, §222.0745; and Transportation Code, §222.077.

§6.42. Performance of Work.

(a) Work performed by the department. The department may, in its discretion and consistent with state law, provide all or part of the work connected with the project in the department's normal course of business. For work performed by the department, the following provisions will apply.

(1) The department will account for all costs of the project in the normal course of business in accordance with applicable law. Financial assistance proceeds shall not be used to pay for project costs incurred prior to execution of the financial assistance agreement.

(2) The department will make progress payments or set aside funds from the bank on behalf of the applicant as the department deems necessary. Such actions shall bind the applicant to repayment according to the terms of the agreement(s). Interest shall accrue from the date of the payment or setting aside of funds.

(3) The department's actions and decisions regarding the project shall not be contestable by the applicant.

(4) The applicant shall provide the department, and if applicable, the Federal Highway Administration, and the Federal Transit Administration, or their authorized representatives as applicable, with right of entry or access to all properties or locations necessary to perform activities required to execute the work, inspect the work or aid otherwise in the prompt pursuit of the work.

(b) Work performed by applicant. The department may, in its discretion and consistent with state law, provide that the applicant conduct all or part of the work connected with the project. For work performed by the applicant, the following provisions apply.

(1) The applicant shall comply with applicable requirements of the federal act, Title 23, United States Code, Title 49, United States Code, other applicable state and federal law, and all terms and conditions of any agreements. Where approval or concurrence of the Federal Highway Administration, the Federal Transit Administration, or other federal agency is required, the applicant shall seek such action through the department. The applicant shall reimburse the department for any loss of federal funds to the department resulting from the applicant's failure to comply.

(2) The applicant shall maintain project records and accounts in accordance with generally accepted accounting principles, and all applicable federal and state requirements.

(3) The applicant shall, at the applicant's cost and in a format prescribed by the department, submit an annual report to the department listing project expenditures, providing an accounting of financial assistance proceeds, and providing any other information requested by the department.

(4) In addition to the annual report, the applicant shall, on request of the department and at the applicant's cost, provide a report containing the same or similar information as required in the annual report under subsection (b)(3) of this section or information relating to project expenditures that the applicant is required to provide to another local, state, or federal agency.

(5) The applicant shall hold all project records, accounts, and supporting documents open for state or federal audits until project completion.

(6) Upon completion of the project, the applicant shall forward to the department all project files and reports as requested by the department. The department shall retain these files until all financial assistance has been repaid and any necessary audits have been performed.

(7) Financial assistance proceeds shall not be used to pay for project costs incurred prior to execution of the financial assistance agreement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801216

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: March 20, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 463-8683

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CHAPTER 8. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Transportation (department) adopts amendments to §8.2 Definitions; Conformity with Statutory Requirements, §8.21, Objective, §8.28, Hearing Docket, §8.56, Final Decision, §8.201, Objective, new §8.301, Scope and Purpose, new §8.302, Conformity with Statutory Requirements, new §8.303, Application of Division and SOAH Rules, new §8.304, Notice of Alleged Violation, new §8.305, Filing of Complaints, Protests, and Petitions, new §8.306, Referral to SOAH, new §8.307, Notice of Hearing, new §8.308, Reply to Notice of Hearing and Default Proceedings, new §8.309, Recording and Transcriptions of Hearing Cost, new §8.310, Issuance of Proposals for Decision, Recommendations, and Orders, new §8.311, Amicus Briefs, new §8.312, Discovery, new §8.313, Official Notice of Division Records, new §8.314, Cease and Desist Orders, new §8.315, Statutory Stay, new §8.316, Informal Disposition, and new §8.317, Motion for Rehearing (new Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings). The amendments to §§8.2, 8.21, 8.28, 8.56, and 8.201 and new §§8.301 - 8.317 are adopted without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8717) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The adopted amendments and new subchapter are necessary to give effect to House Bill 3601, 80th Legislature, Regular Session, 2007. House Bill 3601 provides that, effective September 1, 2007, hearings in contested cases under Occupations Code, Chapter 2301 or under Motor Vehicle Division (division) rules must be conducted by an administrative law judge (ALJ) of SOAH. Hearings on matters filed prior to September 1, 2007 remain at the department. The amendments and new Subchapter I provide for the implementation of the legislative mandate.

Amendments to §8.2, Definitions; Conformity with Statutory Requirements, define ALJ and SOAH to reference administrative law judges of the State Office of Administrative Hearings. These terms are used throughout the adopted amendments.

Amendments to §8.21, Objective, clarify that Subchapter B of 43 TAC Chapter 8 applies to contested cases filed before September 1, 2007. New Subchapter I and the provisions of Subchapter B, insofar as the provisions do not conflict with SOAH's rules, govern cases filed on or after September 1, 2007.

Amendments to §8.28, Hearing Docket, state that the division will continue to maintain an index of all cases it dockets, regardless of whether the matter is referred to SOAH for hearing. This will allow the department to track complaints and hearings through the SOAH administrative process to the final decision by the division director.

Amendments to §8.56, Final Decision, clarify that the exception currently in the section for Lemon Law cases brought under Occupations Code, §§2301.601 - 2301.613 or Occupations Code, §2301.204 applies only to cases filed before September 1, 2007 that will be heard by the division. This complies with the new SOAH hearing process required by House Bill 3601.

Amendments to §8.201, Objective, clarify that Subchapter G of 43 TAC Chapter 8 applies to contested cases filed before September 1, 2007. As for cases filed on September 1, 2007 or later, New Subchapter I and 43 TAC Chapter 8 apply if they do not conflict with SOAH rules. With the passage of House Bill 3601 all cases under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503 will be conducted by SOAH and must follow the provisions of 1 TAC Chapter 155.

New §8.301, Scope and Purpose, states that New Subchapter I governs contested matters filed with the division on or after September 1, 2007. Contested and uncontested matters filed prior to September 1, 2007 are governed by Subchapters A through H of 43 TAC Chapter 8. New Subchapter I provides rules and policies to be considered by SOAH administrative law judges in matters referred by the division.

New §8.302, Conformity with Statutory Requirements, clarifies that in the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 prevails. Occupations Code, §2301.004 provides that unless specifically provided by law, Chapter 2301 governs all aspects of the distribution and sale of motor vehicles. This language is added to clarify the manner in which conflicts between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503 are to be resolved in the hearing process.

New §8.303, Application of Division and SOAH Rules, clarifies the separation of responsibilities between the division and SOAH. The language states that ALJs shall consider Subchapters A through H of 43 TAC Chapter 8 in the hearing and preparation of proposals for decision when those rules do not conflict with other SOAH rules. Agency rules that are not referencing the hearing process and that are not in conflict with SOAH rules should be relied on by all parties participating in the contested case process. Situations unique to motor vehicle contested cases will be found only in 43 TAC Chapter 8 and not in SOAH rules.

New §8.304, Notice of Alleged Violation, describes the process used by the division's enforcement section to inform a subject of an investigation that there is an alleged violation and to provide an opportunity to informally settle the matter. Upon receipt of the notice of alleged violation, the alleged violator has 30 days to informally respond to the allegations and informally settle the matter without a hearing. This provides the alleged violator an opportunity to question and challenge the allegations. The alleged violator can also request a hearing during this time to initiate the contested case process. This pre-hearing process is currently part of the administrative process and the department recognizes the benefit of such a process.

New §8.305, Filing of Complaints, Protests, and Petitions, makes it clear that all complaints, protests, or petitions required or allowed to be filed under the department's enabling statutes or rules must be filed with the director of the division. This section provides for a uniform complaint process and continues the procedure used under the current contested case process.

New §8.306, Referral to SOAH, states that the division shall refer matters to SOAH upon a determination that a hearing is appropriate and lists the most common types of hearings, including enforcement, protest, dealer versus manufacturer, Lemon Law, and hearings on cease and desist orders. This provides necessary guidance on the types of hearing referred to SOAH while also establishing that, in cases involving a complaint, the division will make the initial determination that the matter qualifies for a hearing. Not all complaints will lead to sanctions or administrative actions, therefore, not all will require a hearing. The division will maintain the referral authority to prevent unsupported complaints from congesting the administrative process.

New §8.307, Notice of Hearing, cites the applicable law relating to notices of hearing. It further provides an alternative method of service on parties outside the United States where certified mail is not available. Past experience with the contested case process has shown that alternative service options are necessary to reach parties that reside outside the United States. The goal is to supplement the service on the Secretary of State with other means of service to ensure that notice is received.

New §8.308, Reply to Notice of Hearing and Default Proceedings, states that if a party does not file a reply and does not appear at the hearing, another party may request that the administrative law judge dismiss the matter from SOAH's docket for purposes of presenting it to the director of the department's Motor Vehicle Division (director) for disposition based on default. In a default proceeding, the director may enter a final order with findings that the allegations are deemed admitted. Not later than 10 days after the date of the default proceeding, but before issuance of the final order, a party may file a motion to set aside the default and reopen the record. For good cause shown, the director may set aside the default and remand the matter to SOAH for further proceedings. These procedures will ensure that all parties know the consequences of failing to appear at a scheduled hearing and also will allow the division to finalize uncontested cases and close out the administrative case file.

New §8.309, Recording and Transcriptions of Hearing Cost, states that hearings may be transcribed by a court reporter or electronically recorded at the discretion of the ALJ. As authorized in Government Code, §2001.059, the department may establish how the costs for the court reporter and the transcription of the record will be paid. This rule provides that the costs for transcribing a hearing and preparing an original transcript for the record will be assessed equally among the parties unless otherwise ordered by the director. If a party requests a transcript of a recording, the requesting party is responsible for the cost of preparing the transcript and providing a copy to the director. Copies of recordings will be provided to a party upon written request and payment of the cost of the recording. If a final decision is appealed to the court, the appealing party is responsible for the costs of preparation of the record for the court unless waived by the director. This section continues the procedure currently used for motor vehicle contested cases. The department has determined that it is the responsibility of the parties to provide for the transcript if one is needed to render the final decision.

New §8.310, Issuance of Proposals for Decision, Recommendations, and Orders, states that SOAH shall submit all recommendations and proposals for decision to the director and provide copies to the parties. The director shall furnish all decisions and orders to the parties and SOAH. This clarifies that each agency will provide copies of the documents relating to the decision to the other agency and the parties.

New §8.311, Amicus Briefs, sets out the procedure regarding the filing of amicus briefs. Unless good cause is shown to the director for waiving or extending the deadline, amicus briefs are due to the director, the parties, and SOAH not later than the deadline for exceptions to the proposal for decision. Replies to amicus briefs are due at the same time as replies to exceptions to the proposal for decision. The SOAH ALJ may amend the proposal for decision in response to an amicus brief or reply. This section provides guidance for any party wishing to file an amicus brief and continues the current procedure for motor vehicle contested cases.

New §8.312, Discovery, clarifies that the director will issue commissions to take depositions or subpoenas, but that SOAH will hold any hearings on motions to quash and rule on the motions. This delineates the separation of responsibilities between the division and SOAH and provides information to the parties as to the procedure for obtaining and contesting subpoenas and depositions.

New §8.313, Official Notice of Division Records, allows SOAH to take official notice of division licensing records in accordance with Government Code, Chapter 2001. This section provides for an ALJ's use of the department's records in the ALJ's decision process.

New §8.314, Cease and Desist Orders, describes the requirements for issuing cease and desist orders, with and without notice. A cease and desist order issued without notice expires not later than the 20th day after it is signed, unless it is extended by the director for good cause. A show cause hearing must be held at the earliest possible date and a recommendation must be presented to the director for an interlocutory decision not more than three working days after the hearing. The director's interlocutory decision is sufficient for a complaining party to seek judicial review as set out in Occupations Code, §2301.802. The director may stay the interlocutory cease and desist order during the pendency of the appeal upon a showing of good cause by a party of interest. This section provides the process for the issuance of cease and desist orders and defines the roles of SOAH and the division in the process. This section gives notice to the parties of how and by whom cease and desist orders are granted and establishes the mechanism for contesting the order.

New §8.315, Statutory Stay, describes the process for modifying, vacating, or clarifying a statutory stay. On the request for a hearing by a person affected by a statutory stay, the SOAH ALJ shall hold the hearing on that matter and submit a written recommendation, including a reasoned justification and proposed order, to the director for decision.

New §8.316, Informal Disposition, states that the director may dispose of a contested case at any time by stipulation, agreed settlement, or consent order. The party who filed the complaint, protest, or petition is responsible for dismissing the case from SOAH's docket and presenting a proposed agreed or dismissal order to the director. Proposed agreed orders must contain findings of fact and conclusions of law and must be signed by all parties. The director may adopt an agreed order, reject it and remand to SOAH for hearing, or take any other action as justice requires. This section provides for the opportunity for the parties to continue to negotiate during the contested case process. By providing for informal dispositions, the department is providing an opportunity to resolve matters as expeditiously as possible.

This section recognizes that an administrative action should not continue if the parties involved reach an agreement unless justice requires a case to continue.

New §8.317, Motion for Rehearing, provides that motions for rehearing and replies to motions for rehearing are filed with the director. This section clarifies where a motion or reply needs to be filed.

COMMENTS

No comments on the proposed amendments and new sections were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §8.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, and 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2303.607(c), 2301.701 - 2301.713, and 2301.802, and Transportation Code, §503.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§8.21, 8.28, 8.56

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, and 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2303.607(c), 2301.701 - 2301.713, and 2301.802, and Transportation Code, §503.009.

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §8.201

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, and 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2303.607(c), 2301.701 - 2301.713, and 2301.802, and Transportation Code, §503.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §§8.301 - 8.317

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, and 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2303.607(c), 2301.701 - 2301.713, and 2301.802, and Transportation Code, §503.009.

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION

The Texas Department of Transportation (department) adopts amendments to §17.22, concerning motor vehicle registration, §17.30, concerning commercial vehicle registration, §17.68, concerning rebuilt salvage motor vehicles, §17.73, concerning salvage vehicle dealer license, and §17.81, concerning denial, suspension, or revocation of salvage vehicle dealer licenses. The amendments to §17.22 are adopted with changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8723). The amendments to §§17.30, 17.68, 17.73 and 17.81 are adopted without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8723) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted amendments are necessary to implement the provisions of House Bills 1168 and 2992, and Senate Bills 228 and 1119 of the 80th Legislature, Regular Session, 2007, and to update or clarify existing information.

House Bill 1168 amended Government Code, Chapter 2005 to provide general authority to state agencies for the denial, suspension, or revocation of a license or permit if the applicant or license or permit holder knowingly makes a false statement or misrepresentation when applying for or renewing the license. Government Code, Chapter 2005 applies to a salvage vehicle dealer or agent license issued by the department.

House Bill 2992 amended Transportation Code, §502.167 by eliminating the requirement that a person own a minimum of 50 semitrailers in order for the department to issue the person a Five-year Token Trailer license plate. A person, regardless of the number of semitrailers owned, may now qualify to obtain Five-year Token Trailer license plates and the semitrailers may be operated interstate and intrastate.

Senate Bill 228 added Family Code, §232.0135 by requiring the department to, upon receipt of notice from a child support agency, refuse to renew the motor vehicle registration, salvage vehicle dealer license, or salvage vehicle agent license of a person who is delinquent in child support payments.

Senate Bill 1119 added Transportation Code, Chapter 707 to create a photographic traffic signal enforcement system. Transportation Code, §707.017 provides that the department or county tax assessor collector may refuse to register a motor vehicle if the owner fails to pay the civil penalties associated with a violation of Transportation Code, Chapter 707 and the motor vehicle was allegedly involved in the violation.

As required by Senate Bill 228, amendments to §17.22(d), vehicle registration renewal, reformat the language to add new paragraph (6) providing that the department will mark the motor vehicle record of a motor vehicle owned by a person who is delinquent in payment of child support upon notification by a child support agency. A county will refuse to renew the registration of a vehicle if the vehicle record is marked by the department as a motor vehicle that is owned by a person who is delinquent in payment of child support. Subsequent paragraph (7) is renumbered accordingly.

Amendments to §17.22(g) simply correct citation form.

Amendments to §17.22(h), Enforcement of traffic warrant, more clearly explain that under Transportation Code, §702.003 a municipality may contract with the department to mark the motor vehicle record of a vehicle owner for whom a warrant of arrest has been issued for failure to appear in court or who has failed to pay a fine for a traffic violation. A county tax assessor-collector may refuse to renew motor vehicle registration for vehicles whose records have been marked until the municipality requests that the mark be removed. This amendment is necessary to better explain the process of enforcing traffic warrants.

Section 17.22 is further amended by the addition of new subsection (i). This subsection provides that a local authority that operates a traffic signal enforcement system may contract with the department to mark the motor vehicle record of a vehicle owner who is delinquent in the payment of a civil penalty assessed for a violation of Transportation Code, Chapter 707. Once the record is marked, the county tax assessor-collector may refuse to renew the motor vehicle registration for that vehicle until the local authority requests that the mark be removed. The amendment implements the enforcement authority provided by the legislature under Senate Bill 1119. Subsequent subsection (j) is redesignated accordingly.

Amendment to §17.22(j), Refusal to register vehicle in certain counties, more clearly explains that under Transportation Code, §502.185, a county may contract with the department to mark the motor vehicle record of a vehicle owner who has failed to pay for a fine, fee, or tax that is past due to the county. This amendment is necessary to better explain the process of enforcing county fines, fees, or taxes that are past due.

Section 17.22 is further amended by reformatting the current language regarding procedural aspects of notating the motor vehicle record to new subsection (k). The language sets out terms

that will be included in each contract. This change allows the procedural requirements to apply to all three types of registration refusal contracts to better assist entities that may contract with the department under Transportation Code §502.185, Transportation Code, §702.003, or Transportation Code, §707.017.

Amendments to §17.30(d)(1)(B) delete language regarding Five-year Apportioned Trailer License Plates and redesignate subsequent clauses. The department has not issued Five-year Apportioned Trailer license plates since 2003 as they were rendered unnecessary by the elimination of use taxes charged by a few states. Also eliminated is the provision that Five-year Token license plates are only issued for semitrailers operating intrastate. Prior to 2003, the department required a truck with apportioned license plates to have five year apportioned license plates on the trailer. However, to better serve operators the department now allows semitrailers being operated interstate or intrastate to display Five-year Token Trailer license plates. Additionally, the requirement that a person own a minimum of 50 semitrailers to be issued Five-year Token Trailer license plates is deleted as required by House Bill 2992.

Amendments to §17.68(d), Accompanying documentation, remove the requirement that the rebuilt affidavit in support of an application for a certificate of title for a rebuilt salvage motor vehicle be notarized. This change makes the provision consistent with Transportation Code, §502.156. The amendments also revise the language concerning the statement that is required to be given by the applicant for a title for a rebuilt vehicle. This revision is intended to make that language easier to understand. Finally, the amendments add a requirement for a statement from the rebuilder that all component parts used in the rebuilt vehicle were obtained legally. This statement will assist the department with the enforcement and administration of Transportation Code, Chapter 502, and Occupations Code, Chapter 2302. Subparagraphs are relettered accordingly.

Amendments to §17.73(b), Initial application, add paragraphs (1)(L), (2)(A)(xi), and (3)(J), to require that an application for a salvage vehicle dealer license submitted by a person intending to engage in business as an individual, a corporation, or a partnership include a legible copy of each applicant's driver's license. Occasionally, a criminal background check will return information on more than one person with the same name. The inclusion of each applicant's driver's license with the application will help the department distinguish the applicant's criminal background information from that of another person. Subsequent subparagraphs and clauses are redesignated accordingly.

Amendments to §17.81, Denial, Suspension, or Revocation, add subsection (a)(2), which provides that the department will deny a salvage vehicle dealer or agent license if the applicant makes a false statement or material misrepresentation on an application and changes subsection (b)(14) to allow the department to revoke or suspend such a license if a dealer or agent makes a false statement in a renewal application or other information filed with the department. The addition and change are made to implement the authority granted by House Bill 1168 and Occupations Code, §2302.108, which authorize the department to take disciplinary action in response to a false statement or serious misrepresentation made in connection with an application for or renewal of a salvage vehicle dealer or agent license.

Amendment to 17.81(b)(16) adds "Occupations Code, Chapter 2302" to advise that a violation of that chapter constitutes a reason for suspension or revocation of a salvage vehicle dealers' license.

As required by Senate Bill 228, amendments to §17.81(c), Suspension or refusal to renew due to failure to pay court ordered child support, add that the department, in addition to suspension, will refuse to renew a salvage vehicle dealer license if the department is notified that the license holder has failed to pay child support.

Other amendments to §17.81 are made to reference section titles not previously detailed.

COMMENTS

Comments on the proposed amendments were received from the Texas Automobile Dealers Association and Texas Independent Automobile Dealers Association.

Comment: Both commenters requested §17.22 be clarified regarding the county tax assessor-collector's ability to refuse registration. They specified that Family Code, §232.0022, refers to "suspension and nonrenewal of motor vehicle registration" and §17.22 directs that the county tax assessor-collector's shall refuse motor vehicle registration.

Response: The department agrees Family Code, §232.0022 does not authorize refusal of all registration. Section 17.22(d)(6) does not direct the counties to refuse all registration but only to refuse renewal of registration in accordance with Family Code, §232.0135. For clarification, §17.22(d)(6) has been reorganized and revised to clarify that subsection (d)(6) applies only to the child support obligor's registration renewal.

Comment: Both commenters requested clarification be added to §17.22 that specifies that the suspension and nonrenewal of motor vehicle registration does not apply to encumbering, transfer, sale, purchase, or registration of a motor vehicle by a motor vehicle dealer as provided by Family Code, §232.0022.

Response: Section 17.22(d)(6) relates solely to refusal to renew a child support obligor's registration and not to refuse title transactions. The limitation regarding the encumbering or transfer of the title of a motor vehicle, or the sale, purchase, or registration of a motor vehicle by a motor vehicle dealer is clear in Family Code, §232.0022 and therefore, is not restated.

Comment: One commenter requested §17.22 be amended to address the provisions of Transportation Code, §707.013 relating to rebuttal of the presumption of ownership for vehicles owned by a person selling, renting, or leasing motor vehicles or by a person not named in the notice of violation.

Response: The department rules do not address the rebuttable presumption of ownership for vehicles owned by a person selling, renting, or leasing motor vehicles or by a person not named in the notice of violation because the Transportation Code does not give the department authority to accept a rebuttal. Pursuant to Transportation Code, §707.013(c), such rebuttals may be made only to the local authority alleging the violation or to the entity that operates the traffic signal enforcement program.

Comment: One commenter requested the rules describe the remark language that will be included on a motor vehicle record for delinquent child support, enforcement of traffic warrant, traffic signal violation, and failure to pay fine, fee, or tax.

Response: Remarks placed on motor vehicle records are not described in the rules because they provide the department internal guidance and are subject to frequent change. The inclusion of remark language in the rule would not set forth the nature or requirements for external department procedures.

Comment: One commenter requested the rules include clarification and information regarding the method used to clear a motor vehicle record and the length of time for a record to be cleared after a person has made payment for delinquent child support, a traffic warrant, traffic signal violations, and fines, fees, or tax that are past due.

Response: The department will clear a motor vehicle record as soon as reasonably practicable after it receives a proper request for clearance. If a clearance request is electronically submitted to the department the denial flag will generally be cleared from the motor vehicle record over-night. The length of time it takes to clear a denial flag from a motor vehicle record after payment has been made is largely determined by the length of time it takes the entity that requested the denial flag to submit a removal request to the department. The department will not remove a denial flag until the removal request is submitted. No change has been made to the rule in response to the comment.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.22, §17.30

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501; Occupations Code, §2302.051, which authorizes the department to adopt rules governing the licensing of salvage vehicle dealers; and Occupations Code, §2302.108, which authorizes the commission to establish the grounds for taking disciplinary actions relating to a salvage dealer license.

CROSS REFERENCE TO STATUTE

Family Code, §232.0022, and §232.0135, Government Code, §2005.052, Occupations Code, §2302.051, and §2302.108, Transportation Code, §§501.100, 501.131, 502.156, 502.167, and 707.017.

§17.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used on the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Transportation Code, Chapter 501, Subchapter E and Subchapter D of this chapter prohibit registration of a vehicle whose owner has been issued a salvage or nonrepairable vehicle title. These vehicles may not be operated on a public roadway.

(b) Initial application for vehicle registration.

(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a nonrepairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter D;

(B) registration fees prescribed by law;

(C) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility required by Transportation Code, §502.153, unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except that an application for registration as a prerequisite to filing an application for certificate of title may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered.

(4) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas certificate of title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(A) Registration receipt. The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(B) Information to be included on the form. The form will include the:

(i) out-of-state title number, if applicable;

(ii) out-of-state license plate number, if applicable;

(iii) state or country that issued the out-of-state title or license plate;

(iv) lienholder name and address as shown on the out-of-state evidence, if applicable;

(v) statement that negotiable evidence of ownership is not being surrendered; and

(vi) signature of the applicant or authorized agent of the applicant.

(C) Accompanying Documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(i) a completed application for registration, as specified in paragraph (1) of this subsection;

(ii) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title or registration verification from the other jurisdiction, a registration receipt, a non-negotiable title, or written verification from the other jurisdiction; and

(iii) any other documents or fees required by law.

(D) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a certificate of title under Transportation Code, Chapter 501.

(c) Vehicle registration insignia.

(1) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate.

(C) If the vehicle is registered as a Former Military Vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) Former Military Vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the Former Military Vehicle registration number must conform to the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter must display two license plates, one at the front and one at the rear of the vehicle.

(3) In accordance with Transportation Code, §502.052 and §502.180(e), the department will cancel or not issue any license plate containing an alpha-numeric sequence that meets one or more of the following criteria.

(A) The alpha-numeric sequence conflicts with the department's current or proposed regular license plate numbering system.

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading by one or more members of the public for any reason, including that the pattern may be viewed as having, directly or indirectly:

(i) a sexual connotation;

(ii) a vulgarity;

(iii) one or more words that are not generally considered appropriate for all audiences, including children;

(iv) a derogatory reference to any individual or group;

(v) a reference to alcohol or to illegal activities or substances; or

(vi) a misrepresentation of a law enforcement or other governmental entity.

(C) The alpha-numeric sequence is currently issued to another owner.

(4) The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(2) The department will mail a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail. The registration renewal notice may be used in connection with the renewal of registration at selected county tax assessor-collector offices via the internet. The renewal notice must be accompanied by the following documents and fees:

(A) registration renewal fees prescribed by law;

(B) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility required by Transportation Code, §502.153, unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(B) A 20% delinquency penalty is due when registration is renewed if the owner has been arrested or cited for operating the vehicle without valid registration.

(C) If the county tax assessor-collector determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for twelve months' registration. Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(D) If the county tax assessor-collector determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(E) If a vehicle is registered in accordance with Transportation Code, §§502.164, 502.167, 502.188, 502.203, 504.315, 504.401, 504.405, 504.411, or 504.505, and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(F) Any delinquent registration submitted directly to the department for processing will be evaluated to verify the reason for delinquency. If the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 months' registration. Renewal will establish a new registration expiration month that will end on the last day of the 11th month following the month of registration. If the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same. Valid reasons for delinquency include those reasons set forth in Transportation Code, §502.176(e).

(6) Refusal to renew registration for delinquent child support.

(A) Placement of denial flag. On receipt of a final order issued under Family Code, Chapter 232 for the suspension or nonrenewal of a motor vehicle registration, the department will place a registration denial flag on the motor vehicle record of the child support obligor as reported by the final order.

(B) Refusal to renew registration. While a motor vehicle record is flagged, the county tax-assessor collector shall refuse to renew the registration of the associated motor vehicle.

(C) Removal of denial flag. On receipt of an order issued under Family Code, Chapter 232 vacating or staying an order for the suspension or nonrenewal of a motor vehicle registration, the department will remove the registration denial flag from the motor vehicle record.

(7) License plate reissuance and recall program.

(A) The county tax assessor-collectors are authorized to issue new multi-year license plates at no additional charge on request by the owner at the time of registration renewal, provided the current plates are over five years old.

(B) The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over eight years old.

(e) Replacement of license plates, symbols, tabs, and other devices.

(1) When a license plate, symbol, tab, or other registration device is lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector as prescribed by law.

(2) To obtain a replacement, the owner must properly execute an affidavit containing the vehicle description, the original license plate number, and a sworn statement that the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and will not be used on any other vehicle.

(3) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

(f) Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date on which the owner establishes residence or secures gainful employment, except as provided by Transportation Code, §502.0025. Accompanying a completed application, an applicant must provide:

(1) an application for certificate of title as required by Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) any other documents or fees required by law.

(g) The owner of an electric personal assistive mobility device, as defined by Transportation Code, §551.201, is not required to register it. The device may only be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.202.

(h) Enforcement of traffic warrant. A municipality may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle is a person for whom a warrant of arrest is outstanding for failure to appear or who has failed to pay a fine on a complaint involving a violation of a traffic law. In accordance with Transportation Code, §702.003, a county tax assessor collector may refuse to register a motor vehicle if such a failure is indicated in motor vehicle record for that motor vehicle. A municipality is responsible for obtaining the agreement of the county in which the municipality is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the municipality.

(i) Refusal to register due to traffic signal violation. A local authority, as defined in Transportation Code, §541.002, that operates a traffic signal enforcement program authorized under Transportation Code, Chapter 707 may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of a motor vehicle has failed to pay the civil penalty for a violation of the local authority's traffic signal enforcement system involving that motor vehicle. In accordance with Transportation Code, §707.017, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. The local authority is responsible for obtaining the agreement of the county in which the local authority is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the local authority.

(j) Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay for a fine, fee, or tax that is past due. In accordance with Transportation Code, §502.185, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in motor vehicle record for that motor vehicle.

(k) Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code, §502.185, Transportation Code, §702.003, or Transportation Code, §707.017 will contain the terms set out in this subsection.

(1) To place or remove a registration denial flag on a vehicle record, the contracting entity must submit a magnetic tape or other acceptable submission medium as determined by the department in a format prescribed by the department.

(2) The information submitted by the contracting entity will include, at a minimum, the vehicle identification number and the license plate number of the affected vehicle.

(3) If the contracting entity data submission contains bad or corrupted data, the submission medium will be returned to the contracting entity with no further action by the department.

(4) The magnetic tape or other submission medium must be submitted to the department from a single source within the contracting entity.

(5) The submission of a magnetic tape or other submission medium to the department by a contracting entity constitutes a certification by that entity that it has complied with all applicable laws.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801221
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: March 20, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 463-8683

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SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §17.68

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501; Occupations Code, §2302.051, which authorizes the department to adopt rules governing the licensing of salvage vehicle dealers; and Occupations Code, §2302.108, which authorizes the commission to establish the grounds for taking disciplinary actions relating to a salvage dealer license.

CROSS REFERENCE TO STATUTE

Family Code, §232.0022, and §232.0135, Government Code, §2005.052, Occupations Code, §2302.051, and §2302.108, Transportation Code, §§501.100, 501.131, 502.156, 502.167, and 707.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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SUBCHAPTER E. SALVAGE VEHICLE DEALERS

43 TAC §17.73, §17.81

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501; Occupations Code, §2302.051, which authorizes the department to adopt rules governing the licensing of salvage vehicle dealers; and Occupations Code, §2302.108, which authorizes the commission to establish the grounds for taking disciplinary actions relating to a salvage dealer license.

CROSS REFERENCE TO STATUTE

Family Code, §232.0022, and §232.0135, Government Code, §2005.052, Occupations Code, §2302.051, and §2302.108, Transportation Code, §§501.100, 501.131, 502.156, 502.167, and 707.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

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Bob Jackson
General Counsel
Texas Department of Transportation
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CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts amendments to §21.142, concerning definitions; §21.150, concerning permits; §21.154, concerning lighting of signs; new §21.163, concerning electronic signs; amendments to §21.441, concerning permit for erection of off-premise sign; and §21.551 concerning prohibited signs. The effective date of these rules is June 1, 2008. The amendments to §§21.142, 21.150, 21.154, 21.441 and 21.551 are adopted without changes to the proposed text as published in the September 7, 2007, edition of the *Texas Register* (32 TexReg 6106) and will not be republished. New §21.163 is adopted with changes to the proposed text as published in the September 7, 2007, edition of the *Texas Register* (32 TexReg 6106).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

The purpose for amendments to §21.150 and §21.441 is to implement the provisions of House Bill 2944 (HB 2944), passed by the 80th Legislature in 2007. HB 2944 amends Transportation Code, §391.068, to provide that the commission may not issue a permit for a sign within the jurisdiction of a municipality with a population of more than 1.9 million that exercises its authority to regulate outdoor advertising, unless the municipality has first issued local permission for the sign.

The purpose for changes to §§21.142, 21.154, 21.551 and the addition of new 21.163 is to establish criteria to provide for local control and discretion over the regulation of electronic off-premise outdoor advertising signs which are limited to the cor-

porate limits and controlled extra territorial jurisdiction of municipalities.

The primary responsibility of the department is to carry out the spirit and intent of the federal Highway Beautification Act while recognizing the fundamental right of the regulated industry to compete and pursue the business opportunities presented by the evolution of technology applicable to their particular area of free enterprise.

Amendments to §21.142, Definitions, define an electronic sign to be a sign, display, or device that changes its message by programmable electronic or mechanical processes.

House Bill 2944 amends Transportation Code, §391.068, to provide that the commission may not issue a permit for a sign within the jurisdiction of a municipality with a population of more than 1.9 million that exercises its authority to regulate outdoor advertising, unless the municipality has issued a permit for the sign. To comply with HB 2944, amendments to §21.150, Permits, require that an application for a permit for a sign along a regulated highway that is to be located within the jurisdiction of a municipality with a population of more than 1.9 million be accompanied by a certified copy of the permit issued by the municipality.

Amendments to §21.154, Lighting and Movement of Signs, delete the reference to LED (light-emitting diode) screen and other video displays to authorize the use of LED displays as electronic signs.

New §21.163 regulates the use of electronic signs. The rules establish minimum criteria to limit eligibility of electronic signs and to minimize the distractive effect of commercial electronic variable message signs (CEVMS) to enhance safety on highways.

New §21.163(a), Electronic images, sets forth the department's determination that the use of an electronic image is not the use of flashing, intermittent, or moving light and, therefore, does not violate §21.154 or any other rule, regulation, or standard promulgated by the department or any agreement between the department and the Secretary of Transportation of the United States that prohibits the use of such technology. To comply with federal requirements, and with respect to the prohibition on mobile signs, in order to prevent temporary electronic signs, new §21.163(b), Prohibitions, prohibits the use of flashing, intermittent, or moving lights to illuminate signs; prohibits signs from displaying animated, moving video, or scrolling advertising; prohibits signs that consist of a static image projected upon a stationary object; and prohibits an electronic sign from being located on a truck or trailer.

New §21.163(c), Location of electronic signs, describes location requirements for electronic signs to provide control of electronic signs at the local government level.

New §21.163(d), Upgrading an electronic sign, prohibits the addition of lighting to a nonconforming sign and requires a permit to convert a conforming sign to an electronic sign.

To insure the safety of the traveling public and to insure compliance with federal requirements, new §21.163(e), Eligible electronic signs, details criteria for electronic signs, including visibility and display requirements.

New §21.163(f), Safety, describes requirements necessary for automatic adjustment to the sign and default settings in the event of possible malfunction and concerning brightness levels to insure the safety of the traveling public.

New §21.163(g), Owner responsibility, lists owner responsibilities including the requirement that owners coordinate with emergency officials and provide contact information to the department in case of electronic sign malfunction.

New §21.163(h), Granting permits, provides for permit requirements.

New §21.163(i), Conflicts with subchapter, provides that §21.163 controls in the case of a conflict with other provisions of the subchapter.

House Bill 2944 amends Transportation Code, §394.021 and §394.022, to provide that the commission may not issue a permit for a sign within the jurisdiction of a municipality with a population of more than 1.9 million exercising its authority to regulate off-premises signs unless the municipality has issued a permit for the sign. To comply with HB 2944, §21.441, Permit for Erection of Off-Premise Sign, requires that an application for a permit for an off-premise sign that is visible from the main-traveled way of a rural road and that is located within the jurisdiction of a municipality with a population of more than 1.9 million, must be accompanied by a certified copy of the permit issued by the municipality.

To clarify that electronic signs may not be located along rural roads, §21.551, Prohibited Signs, adds requirements prohibiting animated or scrolling displays and digital signs.

COMMENTS

The Texas Transportation Commission (commission) proposed amendments and the new section on August 23, 2007. During the public-comment period, which ended December 6, 2007, the department received approximately 800 comments regarding the proposed amendments to §§21.142, 21.150, 21.154, new 21.163, and amendments to §21.441, and §21.551. Recognizing the level of interest on both sides of the matter, the rules were made available for public comment for 90 days, rather than the customary 30 days. The comments were sub-divided by respondent affiliation and indexed under these general categories: general public, regulated industry, public officials, and association and interest groups.

Pursuant to the Administrative Procedures Act, Government Code, Chapter 2001, the department conducted a public hearing to receive comments concerning the proposed rules. The public hearing was held at 9 a.m. on Wednesday, November 28, 2007, in the first-floor hearing room of the Dewitt C. Greer State Highway Building in Austin, Texas. Twenty-two people provided written and oral testimony during the public hearing. A summary of the comments and the department's responses follow.

COMMENT:

During the public hearing, Lee Vela, president of Outdoor Advertising Association of Texas, provided testimony and made general reference to a recent safety study by Tantala Associates Consulting Engineers that concluded no correlation demonstrating a statistically valid relationship between vehicular accidents and the presence of billboards including conventional and digital billboards. Mr. Vela also made general reference to a Virginia Tech Transportation Institute study that found digital displays to be "safety neutral" in design and operation.

Mr. Vela offered into the record Exhibit #3, a copy of the September 25, 2007, memo from FHWA to the department and testified that it established digital displays do not violate rules set out in the Highway Beautification Act. Mr. Vela concluded his

comments with observations of potential benefits to local law-enforcement agencies and emergency-message handling to reach the public for use with AMBER Alerts and other emergency and evacuation management situations.

RESPONSE:

These comments offered on behalf of the industry as represented by the Outdoor Advertising Association of Texas present a general position in favor of the rules, as proposed, with no specific recommendations for revision. The testimony is noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

During the public hearing, Blake Custer, president of Clear Channel Outdoor, San Antonio Division, provided testimony that included the following four specific comments:

(1) Mr. Custer commented that the structure of subsection (c) of §21.163 leads to the interpretation that the rule is precluding municipalities from allowing electronic displays on roads other than regulated highways. Clear Channel offered the following revision such that the first sentence would read, "Electronic signs may be located within corporate limits."

(2) Mr. Custer proposes to revise §21.163(c)(2) by eliminating the 1,500 foot spacing criteria for the relocation of an electronic sign in favor of the existing spacing criteria included under §21.160, Relocation, of the existing rules.

(3) Mr. Custer commented that the proposed subsection (d) of §21.163 blurs the application of the non-conforming designation. Clear Channel offered the following revision such that §21.163(d)(2) would read as "a structure on a legally conforming location as determined by department rule may be modified to an electronic sign if a new permit is obtained."

(4) Mr. Custer commented that the intent of subsection (e) of §21.163 is unclear. The use of electronic displays gives Texas businesses the flexibility to tailor their messages to consumers. Mr. Custer offered a proposed revision to remove paragraph (4), questioning whether there is a compelling reason to control the number of different displays per cycle.

RESPONSE:

(1) Given that these rules apply only to regulated highways, the proposed revision is a matter of editorial preference and has no affect on the intent or meaning of the rule as proposed. These rules are specific to regulated highways and do not change any current law regarding a city's authority to control signs along city streets. For the department to include language regarding what can and cannot be located along a city street would be beyond what these rules are intended and authorized to regulate. No change to the section is made as a result of this comment.

(2) The 1,500 foot spacing criteria for relocation of an electronic sign is intended to decrease the distractive effect of adjacent electronic signs and enhance the safety of the traveling public. The testimony is noted and §21.163(c)(2) is revised to clarify that the 1,500 foot spacing criteria applies to spacing off-premise electronic signs and therefore the spacing criteria in §21.160 will apply to relocations adjacent to non-electronic off-premise signs.

(3) The distractive effect of multiple electronic sign displays is appropriately mitigated thru control of the minimum allowable duration for an individual message display (proposed as a minimum eight seconds in these rules). The department concurs with the comment that controlling the number of displays per cycle provides no safety benefit and paragraph (4) of §21.163(e) as proposed is removed.

(4) The department acknowledges that the primary mechanism for effective control of outdoor advertising is the elimination of non-conforming signs over time. It is the intent of the rules as proposed to prohibit any consideration for the conversion of a non-conforming sign to an electronic display. Paragraph (2) of §21.163(d) is revised to provide that "a legally conforming sign may be modified to an electronic sign if a new permit for the electronic sign is obtained from both the municipality and the department."

COMMENT:

During the public hearing, Don Riley, with Lamar Advertising, provided testimony and cited a Virginia Tech study. Mr. Riley offered into the record Exhibit #6, the study titled "Driving Performance and Digital Billboards." Mr. Riley stated that the referenced study concluded digital billboards to be "safety-neutral." Mr. Riley also submitted letters that conventional billboards have not been shown to cause traffic accidents or change driver behavior. Mr. Riley concluded his comments supporting the AMBER Alert and Silver Alert systems for the elderly.

RESPONSE:

These comments offered on behalf of the industry as represented by Lamar Advertising present a general position in favor of the rules, as proposed, with no specific recommendations for revision. The testimony is noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

During the public hearing, Michael Tantala, P.E., with Tantala Associates Consulting Engineers, presented testimony and submitted a study he authored on "An Examination of the Relationship between Signs and Traffic Safety". The study concluded that digital billboards have no statistically significant relationship with occurrence of accidents. The data showed no increase in accident rates.

RESPONSE:

These comments offered on behalf of Tantala Associates Consulting Engineers present a general position in favor of the rules, as proposed, with no specific recommendations for revision. The testimony is noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

The Federal Highway Administration (FHWA) urged the department to strongly consider the following:

(1) Interval of Change/Spacing - The timing of a sign change should not be such that a driver traveling at the posted speed limit on a particular route would be exposed to each sign encountered being in transition during his/her trip.

(2) Spacing - Specific spacing for electronic signs is not addressed in the proposed language with the exception of relocated signs. It appears spacing for electronic digital signs is the same spacing as currently required in Texas Administrative Code, Title 43, §21.153. FHWA Texas Division is requesting the department reconsider the spacing on non-freeway primary routes in incorporated municipalities (Texas Adminis-

trative Code, Title 43, §21.153(f)), and increase the spacing requirement for changeable electronic variable-message signs (CEVMS). Some states currently allowing CEVMS increased the spacing requirement by doubling the spacing requirement for this category of sign, and "we [FHWA] suggest you do the same."

(3) The word "cycle" should be defined for greater clarity. The word cycle is used at §21.163(e)(4).

(4) Additionally, FHWA Texas Division would like the department to track accident rates in areas where new changeable message signs occur on controlled routes as a result of the new regulation. The purpose for collecting the data is to determine the safety impact of the CEVMS on the motoring public.

(5) With reference to the Highway Beautification Act, FHWA Texas Division comments: "The use of frontage roads in Texas provides an opportunity for on-premise electronic signs to be in close proximity to Interstate and Primary routes. Newly erected off-premise signs in close proximity to on-premise signs may have the potential to cause distraction and a safety concern. FHWA would like the department to consider this issue during this regulation process and how the department could implement safeguards for this potential hazard." Lastly, FHWA Texas Division cautions, "In the near future FHWA at the national level will be conducting a research effort to study the potential safety effects of electronic billboards on driver attention and distraction. As a result of this research, revisions to the department regulations may be required."

RESPONSE:

(1) The distractive effect of multiple electronic sign displays is appropriately mitigated through control of the minimum allowable duration for an individual message display (proposed as a minimum eight seconds in these rules). The department concurs with the comment that the timing of a sign change should not be such that a driver traveling at the posted speed limit on a particular route would be exposed to each sign encountered being in transition during the trip. Section 21.163(g)(2) adequately provides a means to remedy this situation, should it occur, by requiring identification of an emergency point of contact with the ability to adjust the sign in the event of this type of malfunction. No change to this section is made as a result of these comments.

(2) The department agrees that spacing of electronic signs should not be less restrictive than the minimum standard established under the Federal-State Agreement. Section 21.153, Spacing of Signs, imposes a stricter standard for spacing that is three times (300 feet) the minimum established in the Federal-State Agreement (100 feet). FHWA's comment is noted, but in lieu of further action on the rules as proposed, the department will apply the existing stricter spacing standard and defer to more restrictive standards as may be required by municipalities.

(3) The department agrees with the need for clarification of the word "cycle" or its elimination from the rules. The department has eliminated paragraph (4) of §21.163(e), which contemplated the establishment of a maximum number of advertising messages per cycle, and therefore, the definition is not needed and further change is not made.

(4) The department agrees with the need for tracking data for accidents in locations in which CEVMS are erected. A contract with an independent engineering firm should be obtained that will monitor and compare traffic accidents before and after the construction of CEVMS for a period of three years. As FHWA will be conducting research to study the potential safety effects of electronic billboards on driver attention and distraction, which may result in revisions to department rules, the department will comply with any required revisions based on the FHWA safety study. No change is made as a result of this comment.

(5) The department agrees with the general concern about distractive effects of exempt on-premise signs. Monitoring of traffic accidents that occur near electronic signs will provide the necessary statistical foundation to revise the rules as necessary. No change is made as a result of this comment.

COMMENT:

Senator John Carona, chairman of the Senate Committee on Transportation and Homeland Security, commented by written reply that there is a fear that the signs violate the Highway Beautification Act and would result in a 10 percent reduction in federal funds.

RESPONSE:

The department's primary responsibility is to enforce federal and state highway-beautification laws in strict compliance with the spirit and intent as determined by our federal partners with the FHWA. The FHWA has commented specifically to verify that these rules, as proposed, do not violate the state-federal agreement and therefore do not subject Texas federal transportation funds to the risk of being sanctioned for noncompliance.

COMMENT:

Approximately 50 form letters from the general public were received opposing LED billboards in Texas: "Thank you for listening to my concerns. I am very opposed to LED billboards in Texas and hope you will help stop them from coming to my community."

RESPONSE:

The commenters offered a general opinion in opposition to the rules, as proposed, with no further recommendation for substantive revision. As previously stated, the department is considering adoption of the rules to provide for local control and discretion over the regulation of electronic off-premise outdoor advertising signs. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Approximately 50 form letters from the general public were received in favor of LED billboards stating that "I do not work in the billboard business, but I read and use them everyday to find where to shop, where to buy gas or for public service messages so important to our community."

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Approximately 350 personal letters were received from the general public. The majority of those who commented from the general public urged a "no" vote by the Commission.

RESPONSE:

The commenters offered a general opinion in opposition to the rules, as proposed, with no further recommendation for substantive revision. As previously stated, the department is considering adoption of the rules to provide for local control and discretion over the regulation of electronic off-premise outdoor advertising signs. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

One hundred and forty-five form letters were received from sign-industry employees "in favor" of the proposed rule amendments. A common comment made in these letters is: "Everyday our business helps to stimulate the economy with the services we supply ... billboard advertising."

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Ten form letters were received from Lamar Advertising "in favor" of the proposed rule amendments. The regulated industry stated, "I am a Business Operator who would like to be given the opportunity to at least be offered the availability to Electronic Billboard usage."

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Approximately 50 form letters were received from Clear Channel "in favor" of the proposed rule amendments. The regulated industry stated, "I support the proposed rule changes that would allow Texas cities to have electronic or digital billboards within their jurisdiction because everyday billboard advertising helps stimulate the economy."

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Approximately 50 letters "in favor" of the proposed rule changes were received from the following businesses: Ad Impressions, Inc., Alamo Outdoor Signs, CBS Outdoor, Clear Channel, Lamar Advertising, Lopez Negrete Communications, Media Strategies, Outdoor Advertising Association of America, Inc., and RMG Outdoor Incorporated.

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

The President of Outdoor Advertising Association of Texas, Lee Vela, submitted the following written comments to proposed new §21.163.

(1) Section 21.163(c)(1), Location of Electronic Signs - The rule should be amended to reflect the division of jurisdiction. Change the first sentence to read "electronic signs may be located within the corporate limits."

(2) Section 21.163(c)(2), Location of Electronic Signs - Proposes eliminating as a method to minimize conflict between the industry and the department and to eliminate any unnecessary burden on taxpayers.

(3) Section 21.163(d)(2), Upgrading an Electronic Sign - Amend the rule to state, "a structure on a legally conforming location as determined by department rule may be modified to an electronic sign if a new permit is obtained."

(4) Section 21.163(e)(4), Eligible Electronic Signs - Remove this subsection. Should there be a compelling reason to control the number of messages.

(5) Section 21.163(g)(2), Owner Responsibilities - Subsection is cumulative and unnecessary. Move this subsection and relocate the requirement of the sign owner to provide contact information to subsection (g)(3).

(6) Section 21.163(g)(2), Owner Responsibilities - The time allowed for a sign company to respond to a departmental contact should be extended from one hour to 24 hours, as an adjustment (to intensity) would be made prior to the next evening.

RESPONSE:

(1) Given that these rules apply only to regulated highways, the proposed revision is a matter of editorial preference and has no affect on the intent or meaning of the rule as proposed. No change is made as a result of this comment.

(2) The 1,500 foot spacing criteria for relocation of an electronic sign is intended to decrease the distractive effect of adjacent electronic signs and enhance the safety of the traveling public. The comment is noted and §21.163 is revised to clarify that the 1,500 foot spacing criteria applies to spacing off-premise electronic signs and therefore the spacing criteria in §2l.160 will apply to relocations adjacent to non-electronic off-premise signs.

(3) The department acknowledges that the primary mechanism for effective control of outdoor advertising is the elimination of non-conforming signs over time. It is the intent of the rules as proposed to prohibit any consideration for the conversion of a non-conforming sign to an electronic display. Paragraph (2) of new §21.163(d), is revised to provide that "a legally conforming sign may be modified to an electronic sign if a new permit for the electronic sign is obtained from both the municipality and the department."

(4) The distractive effect of multiple electronic sign displays is appropriately mitigated through control of the minimum allowable duration for an individual message display (proposed as a minimum eight seconds in these rules). The department concurs with the comment that controlling the number of displays per cycle provides no safety benefit and paragraph (4) of §21.163(e) is removed.

(5) The department does not agree that paragraph (2) of §21.163(g) should be removed. Emergency contact information is essential for a prompt response and remediation of malfunctions in order to insure public safety.

(6) The department concurs with the comment and paragraph (3) of §21.163(g) is revised to provide for a 12-hour response time.

COMMENTS:

Richard H. Erickson, president of Southwest Media Exchange, opposes the proposed rule changes citing safety and distraction concerns, financial windfall for the regulated industry, with little or no benefit to the State of Texas and its citizens.

RESPONSE:

Mr. Erickson offered a general opinion in opposition to the rules, as proposed, with no further recommendation for substantive revision. As previously stated, the department is considering adoption of the rules to provide for local control and discretion over the regulation of electronic off-premise outdoor advertising signs. The comments are noted and no additional action affecting the substance of the rules as proposed is made as a result of the comment.

COMMENTS:

During the public-comment period, 19 comments were received from public officials. Public officials "in favor" of the proposed rule changes include state representatives Joseph Pickett (District 79), Dwayne Bohac (District 138), and Kevin Bailey (District 140), City of Plano Executive Director Frank F. Turner, and City of Victoria Chief of Police Bruce Ure. Their comments referenced safe and effective use of technology, AMBER/Silver alerts, emergency responses, support for local control, and the potential for economic catalyst in communities who choose to allow them.

RESPONSE:

Federal and state rules are constructed to defer to a stricter, local standard conditioned upon meeting the minimum federal standards. New §21.163 adequately establishes local authority to make stricter rules.

COMMENT:

Public officials submitting comments in opposition to the rules include Senate Committee on Transportation and Homeland Security Chairman John Carona, state representatives Rob Eissler (District 15), Eddie Rodriquez (District 51), and Patricia Harless (District 126); Travis County Judge Samuel T. Biscoe, Travis County Commissioner (Precinct 2) Sarah Eckhardt, Harris County Commissioner (Precinct 4) Jerry Eversole, Harris County Attorney Mike Stafford, Fort Worth Mayor Mike Moncrief, City South Management Authority Presiding Officer Ed Garza, and former Mayor of University Park Barbara Hitzelberger Wooten. Their concerns included safety and hazards, distractions, environmental damage, increased costs of highway construction, lighting, compliance with the federal HBA, threat of lost federal highway funds for failure to control outdoor advertising, honoring the memory of Lady Bird Johnson and her legacy of highway beautification, relocation costs, visual pollution, and delay in enacting the rules. Commenters expressed concerns that the cost of eminent domain would be adversely affected due to the increased cost of an electronic sign rather than a regular billboard.

RESPONSE:

The department's primary responsibility is to enforce federal and state highway-beautification laws in strict compliance with the spirit and intent as determined by our federal partners with the FHWA. The FHWA has commented specifically to verify that these rules, as proposed, do not violate the federal-state agreement and therefore do not subject Texas federal transportation funds to the risk of being sanctioned for noncompliance. The department is acting in a regulatory capacity to consider new technology that is being used in the industry and in other states. Eminent domain costs are comprised of numerous variables. The department will monitor whether electronic signs increase eminent domain costs and may make appropriate rule changes in the future as necessary to adequately address those costs.

COMMENT:

Harris County Attorney Mike Stafford expressed concern about the proposed rules with regard to increased condemnation costs, fairness to residents in unincorporated areas, the impact of billboards on costs of public-works projects, and support for local control to uphold community standards as established through city ordinances.

RESPONSE:

Federal and state rules are constructed to defer to a stricter, local standard conditioned upon meeting the minimum federal standards. New §21.163 adequately establishes local authority to make stricter rules without the need for the recommended additional language.

COMMENT:

State Representative (District 52) Mike Krusee supports the proposed rule changes, embraces the safe and effective use of technology, and commended the department for its foresight and economic sense.

RESPONSE:

The commenter offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

City of Austin Mayor Will Wynn proposed that the rules should clarify that any existing non-conforming static sign may not be converted to a changeable electronic billboard without municipal approval. Mayor Wynn urged the commission to delay action on this critical issue until FHWA has released results of its study. The City of Austin also raised an issue that it would "inherit" signs allowed in rural areas in which the city later expands its extraterritorial jurisdiction (ETJ).

RESPONSE:

It is the intent of the rules as proposed to prohibit any consideration for the conversion of a non-conforming sign to an electronic display. The comment is noted and §21.163(d)(2) of the rules as proposed is revised to clarify that to modify an existing sign, a new permit will be required from both the municipality and the state for the electronic sign.

On September 25, 2007, the FHWA published an internal memorandum concluding that "Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the Federal-State Agreement and with acceptable and approved state regulations,

policies and procedures." Previous study results procured by the FHWA on safety issues pertaining to CEVMS have been non-conclusive.

The proposed rules allow electronic billboards only within cities and in the ETJ, and only if the city allows them and has extended its sign ordinance to the ETJ area. Electronic signs are prohibited in areas outside of a city or a city's ETJ, so a city could not "inherit" an off-premise electronic billboard.

COMMENT:

Comments were received from the public and others (including Harris County) that claimed residents in the ETJ have no voice in city government and, therefore, it is unfair for the city to determine that electronic signs can be located there.

RESPONSE:

The Legislature has given cities their respective powers relating to property located within ETJ's, including the power to regulate signs. With respect to powers in the ETJ, and whether a city should have them without residents having a voice, the department is without authority to act. Therefore, no changes are made as a result of these comments.

COMMENT:

City of Plano Executive Director Frank F. Turner proposed that language could be more explicit to §21.163(d), Upgrading an Electronic Sign. Mr. Turner offered the general comment that rules should be modified to clearly address cities that have non-conforming signs and no longer issue permits for new billboards.

RESPONSE:

It is the intent of the rules as proposed to prohibit any consideration for the conversion of a non-conforming sign to an electronic display. In accordance with new §21.163(h), the department will only grant a permit for an electronic sign if the application for the permit has attached to it a certified copy of written permission for the electronic sign from the municipality.

COMMENT:

City of Fort Worth Mayor Mike Moncrief offered amendments to the proposed rules to ensure that the maximum degree of protection and control on the part of municipalities is retained. The City of Fort Worth provided edits to the following sections:

(1) Section 21.150(b)(3) - ". . . if the sign is located within the jurisdiction of a municipality with a population of more than 500,000 that is exercising its authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality."

(2) Section 21.163(c)(1), Location of electronic signs - "Electronic signs may only be located, relocated or upgraded along a regulated highway within the corporate limits of a municipality or within the extraterritorial jurisdiction of a municipality that pursuant to state law has extended its municipal regulation to include that area and is allowed by the municipality's sign and zoning ordinances."

(3) Section 21.163(d)(3), Upgrading an electronic sign - "lighting shall not be added to or used to illuminate a sign if prohibited by the municipality's sign or zoning ordinances."

(4) Section 21.163(h)(2), Granting permits - "The department will grant a permit for an electronic sign if the application for the permit is allowed by the permitting municipality's sign or zoning ordinances; and has attached to it a certified copy of the permit for the located, relocated or upgraded electronic sign."

RESPONSE:

(1) The revision offered by the City of Fort Worth proposes to reduce the population criteria of 1.9 million to a level of 500,000. The 1.9 million-population requirement is explicit in Transportation Code, §391.068(d) as added by HB 2944, 80th Legislature, 2007. The commission is without authority to make the requested change.

(2) The comment is noted and §21.163(c)(1) of the rules as proposed is revised to reflect the suggested change.

(3) The comment is noted and paragraph (3) of §21.163(d) is added to reflect the suggested change.

(4) The comments are noted and §21.163(h) as proposed has been revised to clarify that a municipality's permission is required for any proposed electronic signs.

COMMENT: During the public-comment period, 18 comments, mainly expressing opposition, were received from association and interest groups including Weekley Development, Hamilton Pool Road Scenic Corridor Coalition, Bull Creek Foundation, Houston Northwest Chamber of Commerce, Crow Holdings, North Houston Association Board of Directors, Greenspoint District, Scenic Texas Inc., Keep Pearland Beautiful, and the San Antonio Conservation Society. Concerns included visual pollution, preservation of scenic vistas, compliance with the 1972 State Federal Agreement, safety of LED technology, and lighting. Some of the comments concerned the brightness of the signs and that the signs should automatically dim with changing light conditions. Other comments concerned the cost of the electricity used to light these types of signs.

RESPONSE:

The commenters offered a general opinion in opposition to the rules, as proposed, with no express recommendation for substantive revision. The comments are noted. Section §21.163(f) contains a requirement that an electronic sign will automatically adjust the intensity of its display according to natural ambient light conditions. As previously stated, the department is considering adoption of the rules to provide for local control and discretion over the regulation of electronic off-premise outdoor advertising signs. No change to the substance of these rules as proposed is made as a result of these comments.

COMMENT:

Scenic Texas Inc. President Don Glendenning and Scenic Texas Inc. Executive Vice President and Policy Director Margaret Lloyd submitted written comments (letter, Nov. 28, 2007) expressing "strong opposition" and that the proposed LED rules should not be adopted until the first three issues listed below are resolved in favor of allowing the technology on Texas highways:

(1) Scenic Texas stated that the department should formally assess the potential cost to taxpayers of a change in policy before allowing a single LED billboard.

(2) Scenic Texas stated the applications of this technology must be found to be safe either by FHWA study or by a government-sponsored study of its effects on driver safety. Scenic Texas provided a report ("A Critical, Comprehensive Review of Two Studies Recently Released by the Outdoor Advertising Association of America," Jerry Wachtel, dated Oct. 18, 2007) that was prepared for the Maryland State Highway Administration. The Wachtel report raises serious questions regarding the two studies offered by the Outdoor Advertising Association ("A Study of the Relationship between Digital Billboards and Traffic Safety in Cuyohoga

County, Ohio" (Tantala Associates, July 2007)) and "Driving Performance and Digital Billboards: Final Report" (Lee, McElheny and Gibbons, Virginia Tech Transportation Institute Center for Automotive Safety Research, March 2007).

(3) The proposed rules are in opposition to the department's own vision statement and will degrade the aesthetic beauty of our highway system.

(4) Also, Scenic Texas would like for electronic signs to be allowed only after the city has expressly voted to allow them.

RESPONSE:

(1) As the cost of constructing a CEVMS is obviously the responsibility of the sign owner, the department assumes the comment is directed to the proposed relocation of a CEVMS resulting from the displacement of a sign due to the right-of-way needs of a transportation project. The department is acting in a regulatory capacity to consider new technology that is being used in the industry and in other states. Eminent domain costs are comprised of numerous variables. The department will monitor whether electronic signs increase eminent domain costs and may make appropriate rule changes in the future as necessary to adequately address those costs. No change to the substance of these rules as proposed is made as a result of these comments.

(2) The FHWA has advised that they will conduct research to study the potential safety effects of electronic billboards on driver attention and distraction. The department will comply with any FHWA required revisions resulting from the safety study. No change to the substance of these rules as proposed is made as a result of these comments.

(3) The department does not agree with the comment that the proposed rules are in opposition to the department's own vision statement and will degrade the aesthetic beauty of the state highway system. The department's "vision" is to be a progressive state transportation agency recognized and respected by the citizens of Texas by: (1) providing comfortable, safe, durable, cost-effective, environmentally sensitive, and aesthetically appealing transportation systems that work together; (2) ensuring a safe and desirable workplace which creates a diverse team of all kinds of people and professions; (3) using efficient and cost-effective work methods that encourage innovation and creativity; and (4) promoting a higher quality of life through partnerships with the citizens of Texas and all branches of government by being receptive, responsible, and cooperative.

The department is responsible for the regulation of the orderly and effective display of outdoor advertising along a regulated highway within the state of Texas. The department assumes that the comment is referring to vision item (1) set forth above. The department goal of providing aesthetically appealing transportation systems is not precluded by allowing the regulated industry to incorporate the latest technology for their business. The comment is noted and no additional action affecting the substance of the rules as proposed is made as a result of the comment.

(4) Section 21.163(h) insures that a permit for an electronic billboard will only be granted by the state if the permit is accompanied by a certified copy of permission by the city. If a city did not address electronic billboards in its sign code, or did not have a sign code, permission would still be required, signed and certified by the appropriate city official. Such protections are seen as sufficient to insure that no unauthorized electronic billboards are erected. The commission has no authority to require cities to submit approval of electronic signs to the voters of the cities. No change to the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Frank Sturzl, executive director for Texas Municipal League, strongly supports the principle of local control in the regulation of usage, timing, structure size, and placement of electronic billboards. He provided the following proposed language:

"§21.163(d) Upgrading an electronic sign.

(1) lighting shall not be added to or used to illuminate signs that are nonconforming under state law or any applicable municipal regulations governing a municipality's limits or extraterritorial jurisdiction; and

(2) a sign that is conforming under state law or any applicable municipal regulations governing a municipality's limits or extraterritorial jurisdiction may be modified to an electronic sign if a new permit is obtained through the process described in these rules, including obtaining permission to upgrade to an electronic sign from the municipality with jurisdiction over the sign.

(h) Granting permits. The department will grant a permit for a new electronic sign or for a sign that is conforming under state law or any applicable municipal regulations to be upgraded to an electronic sign if the application for the permit:

(1) satisfies the requirements of this subchapter; and

(2) has attached to it:

(A) a certified copy of the permit issued by the municipality that gives permission for the new electronic sign or to upgrade a sign that is conforming under state law or any applicable municipal regulations to an electronic sign; or

(B) if the municipality does not issue permits, a certified copy of written permission for the new electronic sign or to upgrade a sign that is conforming under state law or any applicable municipal regulations to an electronic sign from the municipality."

RESPONSE:

While the department is of the opinion that the rules as proposed adequately address the issue of local control, the department has revised §§21.163(c)(1), 21.163(d)(2), and 21.163(h) to clarify the necessity for prior municipal approval of any electronic sign.

COMMENT:

City of Houston Mayor Bill White supports language submitted by the Texas Municipal League (TML), clarifying "that TxDOT may not issue a permit for a new electronic sign or to upgrade a standard sign structure to an electronic sign structure unless a permit or express permission by the city local authority to become an electronic sign structure has been provided."

He stated that proposed new §21.163(h)(2) "could be interpreted as allowing a sign-structure owner an opportunity to upgrade a standard structure to an electronic signage structure by submitting to TxDOT the municipal permit issued for the original structure. The City should retain authority to determine whether original signage structures can be upgraded to electronic signage structures, should TxDOT alter its current position and allow electronic signage."

Additionally, Mayor White proposed language that "clarifies our ability to exercise more restrictive rules than those imposed with this department ruling." Specifically, the proposal from the City

of Houston states: "These rules shall not be interpreted to restrict or limit the authority of municipalities to continue to prohibit Electronic Signs or to adopt more stringent ordinances for such signage that is imposed under these rules."

RESPONSE:

While the department is of the opinion that the rules as proposed adequately address the issue of local control, the department has revised §§21.163(c)(1), 21.163(d)(2), and 21.163(h) to clarify the necessity for prior municipal approval of any electronic sign. Nothing in the proposed rules limits a municipality's ability to exercise more restrictive rules than those imposed by the department. A municipality's authority is derived from the Legislature and the department by rule cannot limit or expand such authority.

In addition, minor grammatical changes were made to new §21.163 to improve readability.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

43 TAC §§21.142, 21.150, 21.154, 21.163

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which grants the commission the authority to regulate the orderly and effective display of outdoor advertising along a regulated highway within the state and Transportation Code, §394.004, which grants the commission the authority to promote and control the reasonable, orderly, and effective display of outdoor advertising on all highways and roads.

CROSS REFERENCE TO STATUTE

Transportation Code, §§391.021, 391.022, 391.032 and 394.004.

§21.163. Electronic Signs.

(a) Electronic images. The department has determined that the use of an electronic image on a digital display device is not the use of a flashing, intermittent, or moving light for the purposes of any rule, regulation, and standard promulgated by the department or any agreement between the department and the Secretary of Transportation of the United States.

(b) Prohibitions. An electronic sign shall not:

(1) be illuminated by flashing, intermittent, or moving lights;

(2) contain or display animated, moving video, or scrolling advertising;

(3) consist of a static image projected upon a stationary object; or

(4) be a mobile sign located on a truck or trailer.

(c) Location of electronic signs.

(1) Electronic signs may only be located, relocated, or upgraded along a regulated highway within the corporate limits of a municipality or within the extraterritorial jurisdiction of a municipality that pursuant to state law has extended its municipal regulation to include that area and is allowed by the municipality's sign or zoning ordinance.

(2) Notwithstanding §21.160 of this subchapter, an electronic sign may not be relocated so that any part of the relocated sign would be within 1,500 feet of another off-premise electronic sign on the same side of a regulated highway.

(d) Upgrading an electronic sign.

(1) Lighting shall not be added to or used to illuminate nonconforming signs.

(2) A legally conforming sign may be modified to an electronic sign if a new permit for the electronic sign is obtained from both the municipality and the department.

(3) Lighting shall not be added to or used to illuminate a sign if prohibited by the municipality's sign or zoning ordinance.

(e) Eligible electronic signs.

(1) Electronic signs may be located on either side of the highway; however, each sign must only be visible from one direction of travel.

(2) Each message on an electronic sign shall be displayed for at least eight seconds and a change of message shall be accomplished within two seconds.

(3) A change of message must occur simultaneously on the entire sign face.

(f) Safety. An electronic sign must:

(1) contain a default mechanism that freezes the sign in one position if a malfunction occurs; and

(2) automatically adjust the intensity of its display according to natural ambient light conditions.

(g) Owner responsibilities.

(1) The owner of an electronic sign shall coordinate with local authorities to display, when appropriate, emergency information important to the traveling public, such as Amber Alerts or alerts concerning terrorist attacks or natural disasters. Emergency information messages shall remain in the advertising rotation according to the protocols of the agency that issues the information.

(2) The sign owner shall provide to the department contact information for a person who is available to be contacted at any time and who is able to turn off the electronic sign promptly after a malfunction occurs.

(3) If the department finds that an electronic sign causes glare or otherwise impairs the vision of the driver of a motor vehicle or otherwise interferes with the operation of a motor vehicle, the owner of the sign, within 12 hours of a request by the department, shall reduce the intensity of the sign to a level acceptable to the department.

(h) Granting permits. The department will grant a permit for an electronic sign if the application for the permit:

(1) satisfies the requirements of this subchapter; and

(2) has attached to it:

(A) a certified copy of the permit issued by the municipality that gives permission for the electronic sign; or

(B) if the municipality does not issue permits, a certified copy of written permission for the electronic sign from the municipality.

(i) Conflicts with subchapter. All regulations provided by this subchapter apply to electronic signs, except if this section conflicts with another provision of this subchapter, this section controls.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801224
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: June 1, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-8683

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SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

43 TAC §21.441, §21.551

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which grants the commission the authority to regulate the orderly and effective display of outdoor advertising along a regulated highway within the state and Transportation Code, §394.004, which grants the commission the authority to promote and control the reasonable, orderly, and effective display of outdoor advertising on all highways and roads.

CROSS REFERENCE TO STATUTE

Transportation Code, §§391.021, 391.022, 391.032 and 394.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

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Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: June 1, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-8683

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SUBCHAPTER P. UTILITY RELOCATION PREPAYMENT FUNDING AGREEMENTS

43 TAC §§21.921 - 21.930

The Texas Department of Transportation (department) adopts new §21.921, Purpose, §21.922, Definitions, §21.923, Eligibility, §21.924, Application Procedure, §21.925, Master Agreement, §21.926, Calculation of Annual Prepayment Amount, §21.927, Project Utility Agreement, §21.928, Utility Cost Estimates, §21.929, Reimbursement, and §21.930, General Requirements (New Subchapter P, Utility Relocation Prepayment Funding Agreements), all concerning utility relocation prepayment funding agreements. New §§21.921 - 21.930 are adopted without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8734) and will not be republished.

EXPLANATION OF ADOPTED NEW SUBCHAPTER

Senate Bill 1209, 80th Legislature, Regular Session, 2007, took effect May 17, 2007, and added Transportation Code, §203.0922 authorizing the Texas Transportation Commission (commission) to establish a prepayment funding agreement program for the department to reimburse a utility the costs of relocating certain utility facilities required by the department's improvement of a segment of the state highway system. Currently, the department only reimburses utility companies for the costs of adjusting utility facilities for specific types of state highway improvement projects and circumstances under Transportation Code, §203.092. That includes improvement of interstate highways, segments of the state highway system where the utility has a compensable property interest in the land occupied by the facility to be relocated, and one-half of the costs required by improvement of toll projects. These types of reimbursed utility relocations only account for approximately 10 percent of all projects. For state highway improvement projects that are not covered by Transportation Code, §203.092, there is often a delay in the utility adjustment due to the costs not being reimbursed.

New Transportation Code, §203.0922 authorizes a utility company to execute an agreement with the department in which the utility agrees to annually prepay to the department 75 percent of the estimated utility relocation costs for all state highway improvements during that year that would not be eligible for reimbursement under Transportation Code, §203.092. The prepayment funding agreement program will be set up in three-year cycles. The annual prepayment amount to be paid by a utility for each year of a three-year cycle will be based on the average of actual costs paid for utility relocations on applicable state highways during the preceding three years. The first three-year cycle of the agreement will be based on cost information supplied by the utility for its costs in the preceding three years. All subsequent three-year cycles of the agreement will be based on cost information supplied by the department for actual reimbursements to the utility under the program. In return for the estimated 75 percent prepayment, the department will reimburse the utility company 100 percent of the utility's actual relocation costs on those improvement projects covered by the program during the year. The commission proposes this new subchapter to establish a procedure for the implementation and administration of that legislation.

In compliance with Senate Bill 1209, the commission appointed a rules advisory committee composed of seven members representing the utility community - five from private business and two from local government. Together, the members represented utilities providing service to the public in the areas of water, electricity, gas, communication, and cable television. The rules advisory committee met eight times with department staff to render advice, review draft proposals, and make specific recommenda-

tions. On November 9, 2007, with five members present, the rules advisory committee unanimously recommended that the commission adopt these rules.

New §21.921, Purpose, describes the purpose of the subchapter as establishing a prepayment funding agreement program to reimburse utility companies for costs of adjusting utility facilities required by state highway improvement projects. This program only applies to that portion of utility relocation work for which the utility is not eligible for reimbursement under the general statutory provisions of Transportation Code, §203.092. Consequently, this program does not apply to the costs of relocating utility facilities required by improvement of interstate highways, segments of the state highway system where the utility has a compensable property interest in the land occupied by the facility to be relocated, or one-half of the costs required by improvement of toll projects.

New §21.922, Definitions, defines words and terms used in this subchapter. The definitions in §21.922 of (1) "accounting ledger", (2) "actual costs", (3) "approved work order accounting system", and (16) "indirect and overhead costs" are all tied to the individual utility's establishment of an accounting system for identifying and recording reimbursable utility relocation costs by work order in a format that is submitted to and approved by the department as part of the application process described in §21.924. The accounting system and identification of costs must be compliant with Generally Accepted Accounting Principles.

The definitions in §21.922 of (7) "department", (11) "district", (12) "district engineer", (13) "division", (14) "executive director", and (17) "office" describe the organizational structure of the department and are consistent with definitions used in other chapters of Title 43, Texas Administrative Code (43 TAC).

The definitions in §21.922 of (4) "as-built plans", (6) "conduit", (8) "depth of cover", (10) "distribution line", (21) "service line", (23) "transmission line", and (25) "utility appurtenances" describe technical terms unique to the placement of utility facilities in state highway right of way that are consistent with definitions used in 43 TAC, Chapter 21, Subchapter C dealing with accommodation of utilities in state highway right of way.

New §21.922(5) defines "betterment" as an upgrading of the utility facility being relocated that is not attributable to the highway construction project nor required in order to comply with any other law, and is made solely for the benefit and at the election of the utility. This type of relocation work performed by or on behalf of a utility is a benefit to the utility not caused by the highway improvement and becomes a credit against the utility's actual costs of relocation. The definition is consistent with definitions in the Title 23, Code of Federal Regulations (23 C.F.R.), Chapter 1, Part 645.

New §21.922(9) defines "director" as a designee of the department's executive director not below the level of division director, office director, or district engineer. This person must be a high level department employee and is the administrator of the prepayment funding agreement program on behalf of the department.

New §21.922(15) defines "highway improvement project" as any type of improvement to the state highway system by or on behalf of the State of Texas, whether for roadway, bridge, drainage or any other facility purposes related to the highway, and regardless of the source of funding or the entity responsible for development or operation of the project. The definition excludes projects that are owned or operated by regional mobility authorities and regional tollway authorities that are not subject to the general utility relocation reimbursement authority of Transportation Code, §203.092. Highway improvement projects defined by this section are eligible for participation in the prepayment funding agreement program.

New §21.922(18) defines "relocation" as any adjustment or modification of a utility's facilities required by a highway improvement project, including removal, reinstallation, replacement, temporary facilities, and safety and protective measures. This is the utility work being performed that is eligible for reimbursement under the prepayment funding agreement program. The definition is consistent with definitions in the 23 C.F.R., Chapter 1, Part 645.

New §21.922(19) defines "relocation/adjustment costs" as all of the direct and related indirect and overhead costs identified by the approved utility work order accounting system for work paid or incurred by the utility related to its relocation of utility facilities required by a highway improvement project. Any credits represented by betterments, applicable accrued depreciation, and salvage value will be deducted from the costs. The relocation work must be accomplished in accordance with federal and state requirements and the expenditures must be authorized and allowable under 23 C.F.R., Chapter 1, Part 645 and Federal Acquisition Regulations under Code of Federal Regulations, Title 48, Chapter 1.

New §21.922(20) defines "salvage value" as the amount received by the utility from the sale of utility property removed in the relocation work, or the amount used for accounting purposes if the removed property is retained by the utility. The definition is consistent with definitions in the 23 C.F.R., Chapter 1, Part 645.

New §21.922(22) defines "state highway system" as the system of state highways included in a comprehensive plan prepared by the department's executive director under direction by the commission and as indicated in the Texas Highway Designation Files or State Departmental Map maintained by the department's Transportation Planning & Programming Division. Only utility relocation work related to highways on the state highway system is eligible for participation in the prepayment funding agreement program.

New §21.922(24) defines "utility" as any business entity or political subdivision engaged in the business of transporting or distributing a utility product for public consumption, or any separate operating business unit or department of such an entity. Only a utility defined by this paragraph is eligible for participation in the prepayment funding agreement program. The definition is consistent with definitions in the 23 C.F.R., Chapter 1, Part 645.

New §21.922(26) defines "utility facilities" as all utility lines and their appurtenances not owned or operated by the department that are located within the state highway right of way, including underground, surface, and overhead facilities, and whether transmission, distribution, or service lines. The term only applies to utility lines and appurtenances, the relocation of which is not eligible for reimbursement under Transportation Code, §203.092. If the relocation work is eligible under Transportation Code, §203.092, including improvement of interstate highways and segments of the state highway system where the utility has a compensable property interest in the land occupied by the facility to be relocated, costs related to the utility relocation work are not eligible for reimbursement under the prepayment funding agreement program.

New §21.923(a), Eligibility, establishes the general eligibility requirements for participation in the prepayment funding agreement program. Any utility that installs, operates, constructs, and maintains its utility facilities within state highway right of way and satisfies the financial requirement of §21.923(b) is eligible to apply for the program. Participation is limited to utilities that engage in transporting or distributing a utility product for public consumption and that have lines within state highway right of way, the relocation of which is not eligible for reimbursement under Transportation Code, §203.092.

New §21.923(b), Financial requirement, requires a utility to demonstrate that it incurred relocation costs equal to an average minimum of $500,000 for each year of the three year period preceding submission of the utility's application. The program is designed for utility companies that regularly engage in relocations and incur costs that are significant enough to justify the department's and the utility's additional administrative time, documentation, and expense of participation.

New §21.924(a), Application, outlines the application requirements for an eligible utility's participation in the prepayment funding agreement program. There is no deadline for submitting an application provided that it is submitted prior to the expiration date of Transportation Code, §203.0922. The provisions of that statute set an original expiration date of September 1, 2013. The written application must contain (1) a description of the types of a utility's facilities and other information that indicates the size and location of its facilities, (2) a description of the utility's accounting system with regard to identifying and tracking relocation/adjustment costs by work order, (3) the most recent external audit of the utility's accounting system prepared by an independent certified public accountant within the preceding three years, (4) an accounting ledger that complies with §21.926, (5) a description of the method by which the utility calculates the percentage of indirect and overhead costs to be reimbursed as a relocation/adjustment cost, and (6) a list of each highway improvement project in progress for which the utility is engaged in the relocation of utility facilities and the utility will seek reimbursement of its future relocation/adjustment costs. The application process in §21.924(a) seeks to establish the size and location of utility facilities brought into the prepayment funding agreement program, the capability of a utility's accounting system to accurately identify and record the relocation/adjustment costs, and the historical costing data needed under §21.926 to calculate a realistic annual prepayment amount that will be paid by the utility for each year of the first three year period of the agreement. The reliability of the utility's accounting system and its compliance with Generally Accepted Accounting Principles are the most critical factors in the department's ability to monitor legitimacy of the costs and satisfy its fiscal responsibility.

New §21.924(b), Supplemental information, authorizes the program director to require an applicant to submit explanations and supplemental information to satisfy specific application requirements if the director finds that the information provided in the application is inconsistent or incomplete.

New §21.924(c), Evaluation, establishes the period for the program director to review the application and provide written notice of approval or disapproval. Because there is a separate extended period for contesting and appealing a determination of the initial annual prepayment amounts under §21.926, the director may approve the application subject to a final decision on the initial annual prepayment amount. A notice of disapproval must include the rationale and findings and conclusion on which the disapproval is based.

New §21.924(d), Filing of protest, establishes a protest procedure by which a utility may contest the director's disapproval of its application. The protest must be in writing and state the grounds for the protest and its factual basis. The utility has the burden of proving its protest which will be decided without a hearing and solely on the basis of its written submission. A final written decision approving or disapproving the application must be issued by the executive director or the executive director's designee, who may not be the director, within 30 days after the date of receipt of the protest. The protest procedure provides an opportunity for the utility to appeal the director's disapproval decision to a different senior level department official if the utility is of the opinion that the decision was unreasonable or arbitrary.

New §21.924(e), Reapplication, restricts a utility from reapplying for participation in the program for a period of one year if its application is finally disapproved. Since it is unlikely that any of the adverse conditions that existed at the time of the utility's initial application would have been cured in a shorter time period, a year is a reasonable period for a new application.

New §21.925, Master Agreement, describes the requirement for negotiation and execution of a master agreement between the department and a utility to evidence participation in the program and outlines the provisions that all master agreements must contain. A funding prepayment agreement, described in this section as a master agreement, is required by Transportation Code, §203.0922.

New §21.925(a), Form of master agreement, provides the requirements for the master agreement. The agreement must be in a written form approved by the director, be for a term that is a multiple of three years and a minimum of six years as required by Transportation Code, §203.0922, include the annual prepayment amount for each year of the initial three year period and the method and time of payment, identify the responsibilities of each party, and require execution of separate project utility agreements for each highway improvement project as described in §21.927, Project Utility Agreement.

New §21.925(a)(6) requires execution of two additional agreements that will apply to all relocations of utility facilities during the term of the master agreement that result in a portion of the facilities being placed in a new location, vertical elevation, or horizontal alignment. A comprehensive utility installation request or notice will cover that portion of a relocation located on land for which the utility has no compensable property interest such as an easement and a comprehensive utility joint use acknowledgment agreement will cover that portion of a relocation located on land for which the utility has a compensable property interest. The comprehensive utility installation requests and comprehensive utility joint use acknowledgment agreements must provide for amendment or termination as required to bring the parties into compliance with future material changes to applicable federal and state law. The use of the comprehensive agreements with the required attached drawings and supplements for relocations instead of an entirely separate agreement for each relocation is an effort to streamline the process by reducing paperwork and eliminating time expended in individual negotiations.

New §21.925(a)(7) requires that the master agreement contain statements that the relocation of the utility facilities performed by or on behalf of the utility will comply with applicable federal and state laws, regulations, rules, and policies, that the utility

is responsible for its own acts and deeds during performance of its utility relocation, and that the department, for purposes of reimbursement, has the right to inspect, at its own expense, the relocation work performed by the utility.

New §21.925(a)(8) mandates that the master agreement require the parties to continue performance of their respective payment and relocation work obligations in the event of a dispute and that the continuation of performance is not a waiver of any legal right. Those provisions are intended to foster cooperation and focus on the expeditious performance of obligations.

New §21.925(b), Payment of the annual prepayment amounts, establishes in the master agreement the conditions for payment by the utility of each annual prepayment amount including the method and time of payment. The first annual prepayment amount is due upon execution of the master agreement. Each succeeding annual prepayment is due on or before the anniversary date of the master agreement. The utility may choose to pay the amount in four equal quarterly installments. Interest on past due amounts accrues at the rate described in Government Code, §2251.025, which is currently the prime interest rate plus 1 percent. Both the utility and the state pay the same variable interest rate for past due payments. Quarterly payments are authorized to allow the utility to manage its cash flow requirements and to reduce the loss of interest and use of the money inherent in making large advance payments.

New §21.925(c), Deposit of funds, provides that funds paid by the utility will be deposited into the state treasury to the credit of the state highway fund. This is required by Transportation Code, §203.0922. As mandated by state law, the department will not pay interest on the funds.

New §21.925(d), Payment default by utility, establishes for the master agreement the terms of default by a utility. If the utility fails to timely pay the annual prepayment amount or any installment within 30 days after receipt of written notice of default, the department may terminate the master agreement. This provision provides the utility with written notice and an opportunity to cure the default so that inadvertent missed payments do not result in termination.

New §21.925(e), Payment default by department, establishes for the master agreement the terms of default by the department. If the department fails to timely pay a reimbursement invoice within 30 days after receipt of written notice of default and there have been two or more separate defaults and failures to cure within any one year period, the utility may terminate the master agreement. The difference in treatment of payment default reflects the practical difference in payment obligations. The utility has one payment obligation that is pre-set and known in advance. To the contrary, the department has multiple payment obligations on each project and must respond to bills when submitted. The department must also depend on timely response from the Comptroller's Office. Subsection (e) also gives the utility an option to terminate the agreement either immediately or at the end of that one year period in order to receive maximum benefit of its annual prepayment. The department and all state agencies are prohibited by the Texas Constitution, Article VIII, §6, and Government Code, §403.077 from paying a refund to the utility in the event of early termination.

New §21.925(f), Termination, provides that in addition to the reasons for termination under other provisions of the rules, the master agreement may be terminated by mutual agreement of the parties. Upon termination, the department will retain all utility prepayments received before the date of termination and neither party will have any further obligations under the master agreement, except that the department will continue to reimburse the utility for costs incurred prior to the date of termination.

New §21.925(g), Indirect and overhead costs, outlines the procedure to be followed in a master agreement for calculation of indirect and overhead costs to be charged and reimbursed under the program. The calculation methodology is determined individually for each utility as part of the application process under §21.924 and is applied to each relocation project during the utility's participation in the program. Historically, in dealing with payment submissions for relocation projects that were reimbursable under Transportation Code, §203.092, there was often a dispute over the calculation of indirect and overhead costs. This new approach is an effort to bring consistent treatment to payment of indirect and overhead costs on each of the utility's relocation projects and streamline the process by reducing review and audit time. Paragraph (2) of this subsection authorizes the utility to annually request a change in the methodology by submitting the same type of information required in the application process of §21.924. Paragraph (3) of this subsection allows the department, upon 30 days notice, to audit the utility's financial information that supports the methodology and within 60 days after the utility's request, to object to the change. The objection procedures will be the same as set out in §21.926(e) and (f) dealing with objections to the calculation of relocation/adjustment costs. Paragraph (4) of this subsection maintains the existing calculation methodology for bill submissions pending a final determination on the requested change. The procedures in paragraphs (2), (3), and (4) seek to give the utility flexibility to adjust to changing business conditions while preserving the department's fiscal responsibility to monitor legitimacy of the costs.

New §21.925(h), Notice requirements, imposes specific notice requirements for any acceptance, approval, or any other like action required or permitted to be given by either party under the master agreement. The notice must be in writing, shall not be unreasonably withheld or delayed, and if acceptance, approval, or any other like action is withheld, the withholding party must specify the reason for withholding and make every effort to identify in detail the changes necessary for acceptance, approval, or other action. The object is to foster cooperation and focus on the expeditious performance of obligations.

New §21.925(i), Accounting system, requires the utility to notify the department in writing of any significant change to its accounting system described in its application and approved under §21.924. The notice must describe the new system and include a certification that it complies with the requirements of §21.924. The reliability of the utility's accounting system and its compliance with Generally Accepted Accounting Principles are the most critical factors in the department's ability to monitor legitimacy of the costs and satisfy its fiscal responsibility.

New §21.925(j), Amendment, provides that the master agreement may be amended only by a written instrument executed by both parties.

New §21.925(k), Choice-of-law, provides that the master agreement will be construed under the laws of the State of Texas.

New §21.926, Calculation of Annual Prepayment Amount, describes the procedure for calculation of the annual prepayment amounts to be paid by the utility to the department. Subsection (a)(1) of this section establishes the basic requirement of Transportation Code, §203.0922, that the annual prepayment

amount for each year of the initial three-year period and all subsequent three-year periods will be equal to 75 percent of the averaged annual relocation/adjustment costs incurred or paid for the relocation of utility facilities during the applicable preceding three-year period. The definition of "relocation/adjustment costs" limits the calculation to only those costs related to relocation of utilities on the state highway system for which the utility was not eligible for reimbursement under Transportation Code, §203.092. The remaining paragraphs of subsection (a) of this section further limit and define the types of costs that are to be included in the calculation. Only the work that is eligible for reimbursement under this subchapter will be used in calculating the annual prepayment amount. For reimbursement the relocation/adjustment costs must be paid or incurred within the applicable three-year period, regardless of when the relocation project began or ended. Relocation/adjustment costs will be included in the calculation regardless of which cost method is used by the utility. The objective of the section is to include all relocation/adjustment costs that were actually paid or incurred during the applicable three-year period since that is how the department will be reimbursing the utility under the program.

New §21.926(b), Three-year calculation period, describes how to measure a three-year period for purposes of calculating annual prepayment amounts under this section. The calculation periods are designed to allow the parties a minimum of 60 days prior to the change date in order to close their books and calculate the average costs.

New §21.926(c), Initial three-year period, establishes the specific requirements that a utility must submit for the calculation of the annual prepayment amount for the initial three-year period of the master agreement, including relocation/adjustment cost information and a certified accounting ledger that lists for each year of the preceding three-year period all of the relocation/adjustment costs incurred or paid for relocation of the utility's facilities. The department, upon 30 days written notice, may audit the utility's applicable financial records to verify the accounting ledger. The subsection sets the time limit for the department to complete its audit and submit written objections to the utility. Prior to the creation of this prepayment funding agreement program, the utilities were responsible for paying relocation/adjustment costs on projects that were not eligible for reimbursement by the department under Transportation Code, §203.092. Therefore, the department has no record of those costs and must rely on the utilities' accounting records. There is no uniform method of keeping those records among the utilities so the requirements in this subsection are designed to provide maximum flexibility for the utilities while maintaining a sufficient level of verification by the department to satisfy its fiscal responsibility obligations.

New §21.926(d), Subsequent three-year period, establishes the specific requirements for the department to provide for calculation of the annual prepayment amount for all subsequent three-year periods of the master agreement. The requirements are similar to those for the initial three-year period. The utility may audit the department's applicable financial records to verify the record of financial reports. The subsection sets the time limit for the utility to complete its audit and submit written objections to the utility. Once this prepayment funding agreement program begins, the department will be responsible for paying or reimbursing all relocation/adjustment costs on projects covered by the program. Therefore, the department will have a record of those costs and calculations for future annual prepayment amounts will be more precise. The utilities also have the right to conduct an audit so that they can verify accurate record keeping by the department.

New §21.926(e), Objection to calculation, provides a procedure for either the department or a utility to resolve by negotiation a dispute over an objection to the other party's calculation of relocation/adjustment costs. The department and utility are required to negotiate in good faith. If early negotiation fails, either party may require nonbinding mediation by satisfying the requirements set out in the subsection; the costs of mediation are split equally between the department and the utility.

New §21.926(f), Director's determination, provides that if an agreement is not reached by negotiation or mediation, the director will make a final determination regarding the calculation of relocation/adjustment costs within 60 days after the date that a written objection is received. If the utility does not agree with the final determination or if the director fails to act within the required period, the utility may submit a written protest to the executive director. The protest will be decided by the executive director, or the executive director's designee, within 30 days on the basis of the utility's written submission, without a hearing and with the burden of proof on the utility. Since the department is not authorized by law to engage in binding arbitration for disputes of this type, the mediation and protest procedures are designed to give the utility every opportunity to present its side of the dispute and move resolution of the issue to another person if it feels the director is being arbitrary or unreasonable. The process is similar to procedures used by the department for disputes in other chapters of the Texas Administrative Code. Ultimately, if the department is acting in an arbitrary or unreasonable manner, the utility may bring a lawsuit in district court.

New §21.926(g), Payment due date, delays the utility's payment obligation of an annual prepayment amount until 30 days after final resolution of the dispute concerning the calculation of relocation/adjustment costs.

New §21.927, Project Utility Agreement, outlines procedures and responsibilities related to performance of the utility relocation work on individual projects including cooperative planning, design, cost estimation, and execution of project utility agreements.

New §21.927(a), Purpose, describes its purpose as creating a continuing cooperative role and responsibility for the department and the utility for the adjustment of utility facilities required by improvements to the state highway system. The parties will participate in the planning, design, and construction of highway improvement projects regarding the accommodation of utility joint occupancy and comply with the "TxDOT-Utility Cooperative Management Process" described in the department's Utility Manual. Many of the procedures described in this section are referenced in the Utility Manual, but this section seeks to streamline and clarify those procedures in order to remove the potential for dispute and expedite both the performance of relocation work and reimbursement of the costs. The procedures are consistent with the statutory requirements of Transportation Code, §203.0935.

New §21.927(b), Initial project notification, requires the department to provide to the utility an initial highway improvement project notification that includes the proposed preliminary schematic, scope of the project in narrative form, proposed construction schedule, date of right of way release, and identity of the department's project design engineer and a letter of eligibility for reimbursement under this prepayment funding

agreement program. This requirement is designed to give the utility advance notice of the highway improvement project so that it can determine if the project will interfere with its existing utility facilities.

New §21.927(c), Utility plans, requires the utility to provide to the department within 60 days after receipt of an initial project notification the utility's plans and the name of the utility representative for the relocation. The exchange of information will allow the parties an opportunity to review the planning and highway design and determine if a change in design could reduce or eliminate the need to relocate existing utility facilities.

New §21.927(d), Agreement, requires the parties to negotiate in good faith to reach a project utility agreement when the department provides the utility with sufficient information to enable the utility to reasonably determine the future location of the utility facilities and to prepare the estimated cost of relocation. The project utility agreement is specific to the identified relocation work and establishes the terms of performance and reimbursement.

New §21.927(e), Changes in scope of work, requires the department to reimburse a utility for its cost to redesign and relocate its facilities if there are any significant changes by the department in the scope of work not covered by the approved agreement. The parties must negotiate in good faith to amend the project utility agreement or execute a written change order.

New §21.927(f), Changes in cost estimate, requires the utility to submit a supplemental estimate of costs after the execution of a project utility agreement if the utility reasonably determines that there will be a substantial cost increase for the work.

New §21.927(g), Partially eligible relocations, establishes the method for handling relocation projects that contain both work that is eligible for reimbursement under the prepayment funding agreement program and work that is eligible for reimbursement under Transportation Code, §203.092. Paragraph (1) of §21.927(g) provides that all of the relocation work will be subject to a project utility agreement and its required procedures. Paragraph (2) of §21.927(g) clarifies that only those relocation/adjustment costs not eligible for reimbursement under Transportation Code, §203.092 will be included in the annual prepayment calculation for a subsequent three-year period. This allows the parties to take advantage of the streamlined performance and payment procedures under the prepayment funding agreement program for all of the work while only allocating appropriate amounts to the calculation formula.

New §21.927(h), Preliminary engineering costs, authorizes engineering, surveying, and related project management costs incurred by the utility for design after receipt of an initial project notification to be reimbursed under the program even if the department later determines that the relocation is not necessary. These types of costs serve a useful planning function that expedites the project and benefits both parties.

New §21.928(a), General, describes the form and structure of the cost estimates that must be attached to a project utility agreement as required in §21.927, Project Utility Agreement. The cost estimates must be itemized and sufficiently detailed and informative to provide the department with a clear description of the work required and a reasonable basis for analyzing the actual cost records. The format, structure, and level of detail of the estimate should be substantially the same as the bill.

New §21.928(b), Structure of estimate, describes the substance that cost estimates must contain, including a narrative of the scope of work, the cost categories or accounts required by the utility's approved accounting system, a summary of all costs for the major cost accounts, and all applicable credits. With a streamlined reimbursement process that does not require invoices, it is critical for the department that the cost estimates contain detailed information and that the format, structure, and level of detail of the estimate match the format, structure, and level of detail of the bill. Without this information, it would not be possible for the department to adequately analyze costs listed in the bill and fulfill its financial responsibility to the state.

New §21.929, Reimbursement, describes the reimbursement process, including accounting and billing requirements, prompt payment obligations, and department audit procedures. This is in compliance with the statutory obligation under Transportation Code, §203.0922 to provide a methodology for the utility to submit, document, and substantiate reimbursable costs and a methodology for the department to reimburse the utility its reimbursable costs in a timely manner.

New §21.929(a), Accounting system, requires all utility relocation/adjustment costs to be recorded by means of work orders in accordance with the utility's approved work order accounting system. The utility must maintain complete and accurate records of costs in accordance with federal regulations in its accounting system and must use the same accounting system for all relocations under the master agreement unless otherwise agreed in writing.

New §21.929(b), Intermediate payments, establishes requirements for intermediate payments to the utility for partial performance of the work on a relocation project estimated to take longer than one year or to exceed $100,000. The intermediate payments may not be made more often than monthly and will be based on the percentage of work completed as reported by the utility and independently verified by a department representative. The total amount of intermediate payments may not exceed 80 percent of the total cost estimate. The payment of an intermediate bill is not final payment for any item on which the intermediate payment is made. The use of intermediate payments up to a maximum of 80 percent of the total cost estimate is consistent with existing department policy for utility relocation reimbursements under Transportation Code, §203.092. The one year or $100,000 threshold requirement is designed to make intermediate payments available for relocations that are long enough or expensive enough to likely impose a financial hardship on utility companies without increasing the administrative burden of handling intermediate payment requests on small relocation jobs. Reliance on a utility's certification of work completed rather than a requirement for submitting actual invoices is consistent with the effort to streamline the payment process.

New §21.929(c), Final billing, describes the requirements for a utility's submission and substantiation of a final bill under the actual cost method for relocation work performed on a highway improvement project. The bill must be submitted within 180 days after date of completion of the utility's work. The billing procedure described in this subsection should significantly reduce the administrative paperwork and delay currently associated with reimbursements for utility relocation work under Transportation Code, §203.092. Requirements for submission of actual invoices and a department audit before the final 10 percent can be released to the utility are eliminated. Instead, there is a reliance on the utility's certification of the costs incurred coupled

with a department inspection of the relocation work to verify that it was performed in accordance with the scope of work described in the project utility agreement. The comparison analysis establishes a baseline for assisting in the department's determination as to whether an audit may be necessary and provides an indicator that a utility's cost estimating procedures may need improvement. The requirement here as well as in the definition of "relocation/adjustment costs" that the costs be in compliance with the Federal Acquisition Regulations provides an acknowledged and uniformly accepted national costing standard to which both parties can refer in order to provide consistency in determination of allowable costing and minimization of disputes over methodology and treatment of costs.

New §21.929(d), Prompt payment, imposes on the department an obligation to pay 100 percent of the amount billed within 30 days after receipt of the bill in accordance with the terms of Government Code, Chapter 2251. The obligation to pay arises upon the utility's satisfactory completion of the relocation work and receipt of a properly prepared bill.

New §21.929(e), Electronic billing, authorizes the use of electronic submission for billing information to the extent it is reasonable and practical. This is an additional effort to streamline the billing and payment process.

New §21.929(f), Audit, establishes the procedure and specifications for a department audit of the utility's cost records and accounts. The ability to audit the utility's records relating to reimbursement of relocation/adjustment costs is critical to the department fulfilling its financial responsibility under the program and is required by the 23 C.F.R., Chapter 1, Part 645. Since the streamlined payment process under this program does not require a 10 percent retainage and audit for each relocation project, there needs to be a reasonably effective collection remedy for any unsupported reimbursed costs that are later discovered through periodic audits of the utility's work order accounting system.

New §21.930(a), Projects in progress, clarifies that when a master agreement is executed between the parties and the first annual prepayment is paid, the department's obligation to reimburse relocation/adjustment costs applies to ongoing highway improvement projects as well as those that begin after the master agreement is in effect. However, the obligation to reimburse does not arise until the parties execute a project utility agreement for the remaining portion of the relocation work. Reimbursement is not required if a utility has already completed more than 90 percent of its relocation scope of work or if a utility chooses not to include a relocation that is already in progress.

New §21.930(b), Assignment of interest in master agreement, provides that the master agreement will be binding and benefit the parties and their permitted successors and assigns and further authorizes the assignment of a utility's interest in the master agreement under certain conditions. Because of the common occurrence of acquisitions and mergers in the utility industry, it is necessary to provide flexible alternatives for dealing with those situations. There are three types of utility mergers, acquisitions, and conveyances of facilities that involve assignments of a utility's interest in a master agreement and are covered by this subsection. Paragraph (2) of this subsection provides that if the utility merges with, conveys substantially all of its utility facilities to, or is acquired by another entity that did not previously have any significant utility facilities, the utility can assign all of its interest in its existing master agreement to the new entity. The existing agreement will continue with all of its original terms and will cover the same utility facilities. Paragraph (3) of this subsection provides that if the utility merges with, acquires, or is acquired by another entity that already had significant utility facilities that are also covered by the prepayment funding agreement program, the utility can assign all of its interest in its existing master agreement to the new successor entity. An amended master agreement will be executed that will combine all of the utility facilities and prepayment amounts into a single master agreement, without the need to file a new application or obtain pre-approval by the department. Unless otherwise agreed to by the parties, both the new anniversary date and termination date for the amended master agreement will be the same as the later of the two existing master agreements. Since the anniversary date for one of the entities will change when an amended master agreement is signed, there will be a gap in coverage for that annual prepayment amount which will be paid in a prorated amount at the time of execution. Paragraph (4) of this subsection provides that if the utility merges with, acquires, or is acquired by another entity that already had significant utility facilities but the other entity is not in the prepayment funding agreement program, the successor entity must, within 45 days after the transaction, notify the department of the successor entity's name and contact information and choose to 1) terminate the master agreement at the end of the then current year; 2) continue the master agreement with only the utility facilities covered by the original agreement; or 3) apply for an amended master agreement to combine all of the facilities of both entities. If the successor entity fails to timely notify the department of its selection or if its application for an amended master agreement is disapproved, the successor entity will be deemed to have terminated the existing master agreement.

New §21.930(c), Conveyance of substantially all utility facilities, authorizes a utility to terminate its master agreement if the utility conveys substantially all of its utility facilities to another business entity that does not control and is not controlled by the utility or any of its members, partners, or shareholders. This subsection allows the utility to sell all of its utility facilities to another business without either entity being bound by the master agreement.

New §21.930(d), Acquisition or conveyance of major utility facilities, authorizes either the utility or department to request an amendment to a master agreement if the utility acquires major utility facilities from, or conveys major utility facilities to, another business entity that does not control and is not controlled by the utility or any of its members, partners, or shareholders. It is common in the utility industry for a utility to acquire or convey significant portions of utility facilities while maintaining its business of transporting or distributing a utility product for public consumption. This subsection sets out the procedure to provide flexible alternatives for dealing with those transactions by modifying the utility's payment obligations to match its new inventory of facilities. The utility is required to provide a certification of the estimated number of centerline miles of state highway right of way of increase or decrease as a result of the acquisition or conveyance, the resulting percentage of increase or decrease, the types of utility facilities that were involved, and the counties or regions in which the acquired or conveyed utility facilities are approximately located. Within 30 days after receipt of the acquisition/conveyance notice and certification, either the department or utility may request that the master agreement be amended to adjust the calculation of future annual prepayment amounts.

New §21.930(e), Conflict, contains a conflicts provision. Some of the utility relocation issues addressed in existing Chapter 21, Subchapter B (Utility Adjustment, Relocation, or Removal) and Subchapter C (Utility Accommodation) are similar to the issues in the new prepayment funding agreement program provided by

Chapter 21, New Subchapter P. While some of the procedures are common, others are being changed to accomplish a streamlined process. This subsection specifically provides that New Subchapter P controls if there is a conflict between it and Subchapter B or C.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.095, which directs the department to adopt rules to implement Transportation Code, Chapter 203, Subchapter E concerning relocation of utility facilities required by improvement to the state highway system.

CROSS REFERENCE TO STATUTE

Transportation Code, §203.092 and §203.0922.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2008.

TRD-200801226
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: March 20, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Parks and Wildlife Department

Title 31, Part 2

TRD-200801174
Filed: February 27, 2008

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Texas Board of Professional Land Surveying

Title 22, Part 29

TRD-200801250
Filed: March 3, 2008

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Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Texas Administrative Code, Title 4, Part 1, Chapter 8, concerning Agricultural Hazard Communication Regulations, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Chapter 8, §8.2, concerning definitions, and §8.11, concerning counties in which the department will provide the training program for agricultural laborers. These may be found in the Proposed Rules section of this issue of the *Texas Register*.

The assessment of Chapter 8 by the department at this time indicates that, with the exception of the proposed amendments to Chapter 8, §8.2 and §8.11, the reason for readopting without changes all remaining sections in Chapter 8, continues to exist.

The department is accepting comment on the review of Chapter 8. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200801255
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: March 3, 2008

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The Texas Department of Agriculture (the department) proposes to review Texas Administrative Code, Title 4, Part 1, Chapters 13, 14, 15, 21 and 23, pursuant to the Texas Government Code, §2001.039. Chapter 13 is titled Grain Warehouse, Chapter 14 is the Perishable Commodities Handling and Marketing Program, Chapter 15 is Egg Law, Chapter 21 is titled Citrus, and Chapter 23 is Rose Grading. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes an amendment to Chapter 23, concerning Rose Grading, §23.4. The proposal may be found in the Proposed Rules section of this issue of the *Texas Register*.

The assessment by the department of Chapters 13, 14, 15, 21 and 23 indicates that, with the exception of the proposed amendment to §23.4, the reason for readopting without changes all remaining sections in Chapters 13, 14, 15, 21 and 23 continues to exist.

The department is accepting comment on the review of Chapters 13, 14, 15, 21 and 23. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments on Chapters 13, 14, 15, 21 and 23 may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200801253
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: March 3, 2008

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Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, §167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 141 (General Provisions), Subchapter C (Submission

and Presentation of Information and Representation of Offenders), and Chapter 145 (Parole), Subchapter A (Parole Process).

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us.

TRD-200801251
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: March 3, 2008

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Texas Board of Professional Engineers

Title 22, Part 6

The Texas Board of Professional Engineers will review and consider for readoption, revision, or repeal Title 22 Texas Administrative Code, Part 6, Chapter 133, concerning Licensing.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 30 days to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-200801268
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 3, 2008

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The Texas Board of Professional Engineers will review and consider for readoption, revision, or repeal Title 22 Texas Administrative Code, Part 6, Chapter 135, concerning Firm Registration.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 30 days to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-200801269
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 3, 2008

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The Texas Board of Professional Engineers will review and consider for readoption, revision, or repeal Title 22 Texas Administrative Code, Part 6, Chapter 137, concerning Compliance and Professionalism.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 30 days to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-200801270
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 3, 2008

♦ ♦ ♦

The Texas Board of Professional Engineers will review and consider for readoption, revision, or repeal Title 22 Texas Administrative Code, Part 6, Chapter 139, concerning Enforcement.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 30 days to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-200801271

Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 3, 2008

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Office of the Secretary of State

Title 1, Part 4

The Office of the Secretary of State (the office) proposes to review Title 1 *Texas Administrative Code* Part 4, Chapters 71, 72 - 76, 78 - 81, 83, 87, 91, 93, 95 - 97, 101 - 103 and 105, in accordance with the requirements of the Government Code, §2001.039, which directs state agencies to review and consider for re-adoption each of their rules every four years. During this review the Office will assess whether the reasons for adopting these chapters continue to exist.

The Secretary of State has received a written suggestion to amend §73.3, concerning Labor Organizers, to omit a reference to "his seal of office" and replace this term with "the state seal". The paragraph now reads, "(5) the signature of the secretary of state, dated and attested by his seal of office." The office agrees with this comment, and intends to amend the paragraph, accordingly.

In 2007 the office adopted changes and/or repealed rules for the following chapters:

81. Elections.

87. Notary Public.

95. Uniform Commercial Code.

96. Electric Utility Transition Property Notice Filings.

The current review is open to all Secretary of State rules under Title 1 of the Texas Administrative Code, Part 4. Comments on the proposed review may be submitted in writing. Please address comments to Dan Procter, P.O. Box 13824, Austin, Texas 78711-3824 or e-mail comments to dprocter@sos.state.tx.us. To be considered, please deliver comments before 5:00 p.m. Monday, April 14, 2008.

Chapters:

71. General Policies and Procedures

72. State Seal

73. Statutory Documents

74. Credit Services Organizations

75. Automobile Club

76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness

78. Athlete Agents

79. Corporations

80. Unincorporated Business Entities

81. Elections

83. Limited Partnership

87. Notary Public

91. Texas Register

93. Trademarks

95. Uniform Commercial Code

96. Electric Utility Transition Property Notice Filings

97. Business Opportunity

101. Practice and Procedure Before the Office of the Secretary of State

102. Health Spas

103. Membership Camping Resorts

105. Solicitations

TRD-200801312
Jay Dyer
General Counsel
Office of the Secretary of State
Filed: March 5, 2008

♦ ♦ ♦

Adopted Rule Reviews

Texas Council for Developmental Disabilities

Title 40, Part 21

The Texas Council for Developmental Disabilities (Council) adopts the review of the Texas Administrative Code, Title 40, Part 21, Chapter 876, §§876.1 - 876.12, related to General Provisions, pursuant to the Texas Government Code §2001.039, and readopts the rules in Chapter 876.

The proposed review was published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 10069).

No comments were received regarding adoption of the review.

The Council has determined that the reasons continue to exist for adopting the rules contained in this chapter.

This concludes the review of Chapter 876, General Provisions.

TRD-200801186
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: February 29, 2008

♦ ♦ ♦

The Texas Council for Developmental Disabilities (Council) adopts the review of the Texas Administrative Code, Title 40, Part 21, Chapter 877, related to Grant Awards, pursuant to the Texas Government Code §2001.039, and readopts the rules in Chapter 877.

Elsewhere in this issue of the *Texas Register*, the Texas Council for Developmental Disabilities contemporaneously adopts amendments to §§877.1, 877.3 and 877.4.

The proposed review was published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 10069).

No comments were received regarding adoption of the review.

The Council has determined that the reasons continue to exist for adopting the rules contained in this chapter.

This concludes the review of Chapter 877, Grant Awards.

TRD-200801187
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: February 29, 2008

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review that was published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8321), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 69, Membership and Refunds, pursuant to Texas Government Code, §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist and, therefore, the Board readopts Chapter 69. This completes ERS' review of 34 TAC Chapter 69, Membership and Refunds.

TRD-200801292
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 4, 2008

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8321), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 73, Benefits, pursuant to Texas Government Code, §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist and, therefore, the Board readopts Chapter 73. This completes ERS' review of 34 TAC Chapter 73, Benefits.

TRD-200801293
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 4, 2008

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8322), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 75, Hazardous Profession Death Benefits, pursuant to Texas Government Code, §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist and, therefore, the Board readopts Chapter 75. This completes ERS' review of 34 TAC Chapter 75, Hazardous Profession Death Benefits.

TRD-200801294
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 4, 2008

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8322), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 77, Judicial Retirement, pursuant to Texas Government Code, §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist and, therefore, the Board readopts Chapter 77. This completes ERS' review of 34 TAC Chapter 77, Judicial Retirement.

TRD-200801295
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 4, 2008

♦ ♦ ♦

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) readopts Texas Administrative Code (TAC), Title 16, Chapter 27, Rules for Administrative Services pursuant to the Texas Government Code, Administrative Procedure Act (APA), §2001.039, *Agency Review of Existing Rules*. The notice of intention to review Chapter 27 was published in the *Texas Register* on August 31, 2007 (32 TexReg 5712). Project Number 34576, *Agency Review of Chapter 27, Rules for Administrative Services, Pursuant to Texas Government Code §2001.039* is assigned to this review proceeding. This concludes the review of Chapter 27 pursuant to APA §2001.039.

APA §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission requested specific comments on whether the reason for adopting the administrative services rules in Chapter 27 continues to exist. The commission received no comments on the proposed review of Chapter 27.

While no comments were received on the rule review, Staff concluded that an amendment to §27.31, relating to Historically Underutilized Business Program, is necessary to comply with legislative amendments, which were effective September 1, 2007. Before September 1, 2007, the commission, under Texas Government Code §2161.003, was required to adopt the Historically Underutilized Business (HUB) Program rules from the Texas Building and Procurement Commission (formerly called the Texas General Services Commission, and now called the Texas Facilities Commission). The current §27.31 states that "the commission adopts by reference the rules of the Texas General Services Commission." Because the HUB program rules have now been transferred to the Texas Comptroller of Public Accounts, as of September 1, 2007, an amendment to §27.31 is required to comply with Texas Government Code §2161.003. Any amendment to any rule is required to be published for comment; therefore, an amendment to §27.31 will be proposed and published for comment in a separate project.

The commission has completed the review of the rules in Chapter 27 pursuant to APA §2001.039 and finds that the reason for adopting the rules in Chapter 27 continues to exist. The adoption of Chapter 27 complies with Texas Government Code §2260.052, which requires the commission to develop rules to govern the negotiation and mediation of certain contract claims against the state; and Texas Government Code §2155.076, which requires the commission to develop and adopt

protest procedures for vendors' protests concerning commission purchases that are consistent with the Texas Facilities Commission's rules on the same subject.

The commission readopts Chapter 27, Rules for Administrative Services, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2007) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and pursuant to Texas Government Code §2001.039 (Vernon 2000 and Supp. 2007) which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039, Chapter 2155, Subchapter B, Chapter 2161 and Chapter 2260; PURA §14.002 and §14.052.

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

§27.31. Historically Underutilized Business Program.

SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

DIVISION 1. GENERAL

§27.61. Purpose.

§27.63. Applicability.

§27.65. Definitions.

§27.67. Prerequisites to Suit.

§27.69. Sovereign Immunity.

DIVISION 2. NEGOTIATION OF CONTRACT DISPUTES

§27.81. Notice of Claim of Breach of Contract.

§27.83. Agency Counterclaim.

§27.85. Request for Voluntary Disclosure of Additional Information.

§27.87. Duty to Negotiate.

§27.89. Timetable.

§27.91. Conduct of Negotiation.

§27.93. Settlement Approval Procedures.

§27.95. Settlement Agreement.

§27.97. Costs of Negotiation.

§27.99. Request for Contested Case Hearing.

DIVISION 3. MEDIATION OF CONTRACT DISPUTES

§27.111. Mediation Timetable.

§27.113. Conduct of Mediation.

§27.115. Agreement to Mediate.

§27.117. Qualifications and Immunity of the Mediator.

§27.119. Confidentiality of Mediation and Final Settlement Agreement.

§27.121. Costs of Mediation.

§27.123. Settlement Approval Procedures.

§27.125. Initial Settlement Agreement.

§27.127. Final Settlement Agreement.

§27.129. Referral to the State Office of Administrative Hearings (SOAH).

DIVISION 4. ASSISTED NEGOTIATION PROCESSES

§27.141. Assisted Negotiation Processes.

§27.143. Factors Supporting the Use of Assisted Negotiation Processes.

§27.145. Use of Assisted Negotiation Processes.

SUBCHAPTER D. VENDOR PROTEST

§27.161. Procedures for Resolving Vendor Protests.

TRD-200801243
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 29, 2008

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §23.4(c)(5)

Grades	H.T. Climbers, Grandiflora and Floribunda	Polyantha, Shrub, Landscape, and Low Growing Floribunda Roses
Jumbo No. 1 Grade	4 canes 5/16 in. cal. or larger	6 canes 2/16 in. cal. or larger
No. 1 Grade	3 canes 5/16 in. cal. or larger	5 canes 2/16 in. cal. or larger
No. 1 ½ Grade	2 canes 5/16 in. cal. or larger	4 canes 2/16 [~~1/16~~] in. cal. or larger
No. 2 Grade	2 canes ¼ in. cal. or larger	3 canes 2/16 in. cal. or larger
No. 3 Grade	1 cane ¼ in. cal. or larger with one viable cane 6" in length and a well developed root system	3 canes 2/16 in. cal. or larger

Figure: 25 TAC §205.4(l)(2)(C)

UNDER PENALTY OF LAW THIS TAG MUST NOT BE REMOVED EXCEPT BY THE CONSUMER
THIS ARTICLE CONTAINS **SECONDHAND MATERIAL** REG. NO. _____

Figure: 25 TAC §205.4(l)(3)(G)

UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER
Certification is made that this **SECONDHAND (USED) ARTICLE SANITIZED** This Article of Bedding Has Been Treated by a Germicidal Process Approved by the Texas Department of State Health Services
Lot No. _____ Tag No. _____ Article _____ Method _____ Date _____
Reg No. _____

Figure: 30 TAC §217.32(a)(3)

Table B.1. - Design Organic Loadings and Flows for a New Facility

Source	Remarks	Daily Wastewater Flow (gallons/person)	Wastewater Strength (mg/l BOD_5)
Municipality	Residential	75-100	200-350
Subdivision	Residential	75-100	200-350
Trailer Park (Transient)	2½ Persons per Trailer	50-60	250-300
Mobile Home Park	3 Persons per Trailer	50-75	300
School	Cafeteria & Showers Cafeteria/No Showers	20 15	300 300
Recreational Parks	Overnight User Day User	30 5	200 100
Office Building or Factory	A facility must be designed for the largest shift	20	300
Hotel/Motel	Per Bed	50-75	300
Restaurant	Per Meal	7-10	1000*
Restaurant with bar or cocktail lounge	Per Meal	9-12	1000*
Hospital	Per Bed	200	300
Nursing Home	Per Bed	75-100	300
Alternative Collection Systems (Subchapter D)	Per Capita	75	N/A
*Based on a restaurant with a grease trap			

Figure: 30 TAC §217.53(k)(3)

Equation B.1.

$$PS = C \times RSC \times \left(\frac{8.337}{D}\right)$$

Where:
PS = Pipe stiffness in pounds per square inch (psi)
C = Conversion factor, (0.80)
RCS = Ring stiffness constant
D = Mean pipe diameter in inches

Figure: 30 TAC §217.53(l)(2)(A)

Table C.1 - Minimum and Maximum Pipe Slopes

Size of Pipe *(inches)*	**Minimum Slope** *(%)*	**Maximum Slope** *(%)*
6	0.50	12.35
8	0.33	8.40
10	0.25	6.23
12	0.20	4.88
15	0.15	3.62
18	0.11	2.83
21	0.09	2.30
24	0.08	1.93
27	0.06	1.65
30	0.055	1.43
33	0.05	1.26
36	0.045	1.12
39	0.04	1.01
>39	*	*
* For pipes larger than 39 inches in diameter, the slope is determined by Manning's formula to maintain a velocity greater than 2.0 feet per second and less than 10.0 feet per second when flowing full.		

Figure: 30 TAC §217.53(l)(2)(B)

Equation C.2. Manning's Formula.

$$V = \frac{1.49}{n} \times R_h^{0.67} \times \sqrt{S}$$

Where:

V = velocity (ft/sec)

n = Manning's roughness coefficient (0.013)

R_h = hydraulic radius (ft)

S = slope (ft/ft)

Figure: 30 TAC §217.54(d)(4)

TRENCH CROSS-SECTION SHOWING TERMINOLOGY

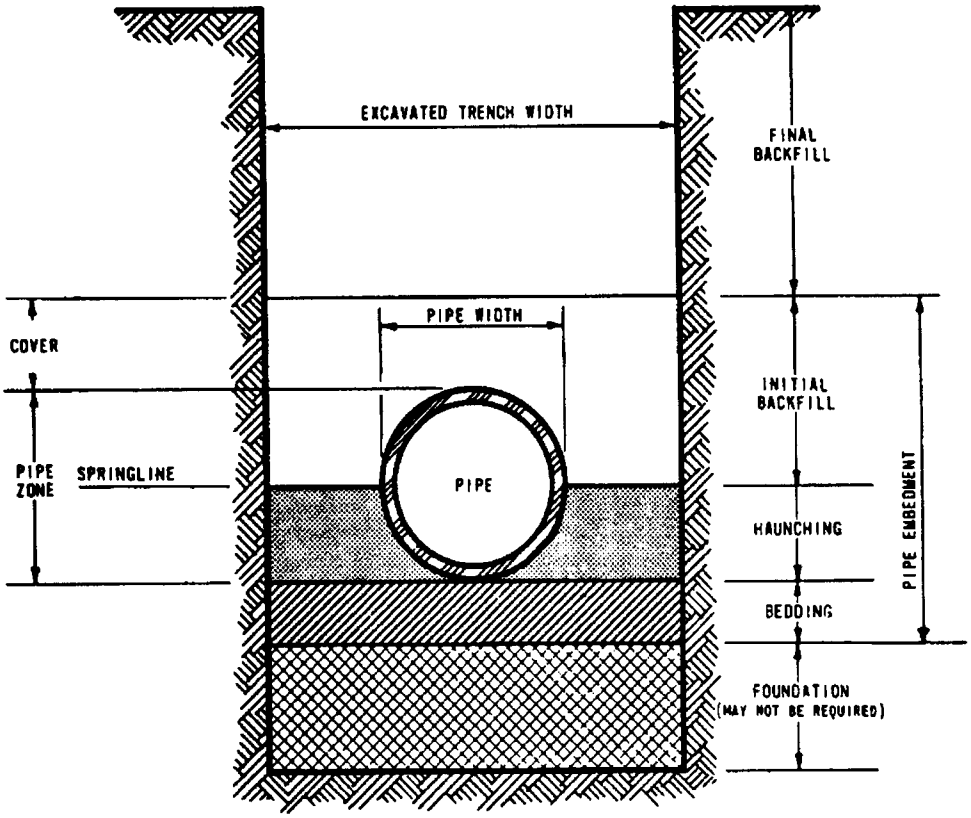

Figure: 30 TAC §217.55(g)

Table C.2. - Maximum Manhole Spacing

Pipe Diameter *(inches)*	**Maximum Manhole Spacing** *(feet)*
6-15	500
18-30	800
36-48	1000
54 or larger	2000

Figure: 30 TAC §217.57(a)(1)(B)(ii)

Equation C.3.

$$T = \frac{(0.085 \times D \times K)}{Q}$$

Where:

T = time for pressure to drop 1.0 pound per square inch gauge in seconds
K = 0.000419HDHL, but not less than 1.0
D = average inside pipe diameter in inches
L = length of same pipe size being tested, in feet
Q = rate of loss, 0.0015 cubic feet per minute per square foot internal surface

Figure: 30 TAC §217.57(a)(1)(C)

Table C.3. - Minimum Testing Times for Low-Pressure Air Test

Pipe Diameter *(inches)*	**Minimum Time** *(seconds)*	**Maximum Length for Minimum Time** *(feet)*	**Time for Longer Length** *(seconds/foot)*
6	340	398	0.855
8	454	298	1.520
10	567	239	2.374
12	680	199	3.419
15	850	159	5.342
18	1020	133	7.693
21	1190	114	10.471
24	1360	100	13.676
27	1530	88	17.309
30	1700	80	21.369
33	1870	72	25.856

Figure: 30 TAC §217.60(b)(7)

Table C.4. - Minimum Pump Cycle Times

Pump Horsepower	**Minimum Cycle Times** *(minutes)*
< 50	6
50-100	10
> 100	15

Figure: 30 TAC §217.60(b)(8)

Equation C.5.

$$V = \frac{T \times Q}{4 \times 7.48}$$

Where:

V =	Active volume (cubic feet)
Q =	Pump capacity (gallons per minute)
T =	Cycle time (minutes)
7.48 =	Conversion factor (gallons/cubic foot)

Figure: 30 TAC §217.92(e)

Equation D.1.

$$Q = X \times (1 + B)$$

Where:

Q =	flow in gallons per day
X =	per capita wastewater production in gallons per day
B =	number of bedrooms

Figure: 30 TAC §217.92(f)

Equation D.2.

$$Q = A \times (N + B)$$

Where:

Q =	Design flow rate (gallon per minute)
A =	Design coefficient, typically 0.5
N =	Number of EDUs served by the off-site component
B =	Safety factor, assumed to be 20.0

Figure: 30 TAC §217.92(f)(1)

Equation D.3.

$$Q = A_1 \times (P + B)$$

Where:

Q = Design flow rate (gallon per minute)

A_1 = Derived from A in Figure: 30 TAC §217.92(f), Equation D.2, typically 0.15

P = Population to be served

B = Safety factor, assumed to be 20.0

Figure: 30 TAC §217.96(a)(3)

Equation D.4.

$$VT = VR + VN$$

Where:

VT = Total Volume

VR = Reserve Volume = 0.75 x average daily flow (ADF)

VN = Nominal Volume

Equation D.5.

$$VN = VIE + VCZ + VSO$$

Where:

VIE = Volume in gallons between elevation of a tank inlet and a tank outlet (≤0.165 average daily flow (ADF))

VCZ = Volume in gallons of the clear zone between maximum sludge depth and scum accumulation (ADF)

VSO = Volume in gallons dedicated to scum and sludge storage (1.85 ADF)

Figure: 30 TAC §217.98(d)

Equation D.6.

$$Q_{vp} = \frac{A \times Q_{max}}{7.5 g/cf} + B \times N$$

Where:

Q_{vp} =	Minimum vacuum pump capacity
A =	Variable based on pipe length
Q_{max} =	Station peak flow (gpm.)
B =	Bleed rate of vacuum valve controller (square feet per minute.)
N_v =	Number of vacuum valves in system
g/cf =	gallons per cubic feet

The value of A must be as follows:

Longest Pipe Length (feet.)	A
0-3,000	5
3,001-5,000	6
5,001-7,000	7
7,001-10,000	8
10,001-12,000	9
12,001-15,000	11

Equation D.7.

$$Q = \frac{V}{PDT} \times \log \frac{H_1}{H_2}$$

Where:

Q =	Flow rate of vacuum pump (cubic feet per second)
PDT =	Time to reduce head from H_1 to H_2 (seconds)
V =	Volume of closed system (cubic feet)
H_1 =	Initial absolute pressure head (inches of mercury)
H_2 =	Final absolute pressure head (inches of mercury)

Figure: 30 TAC §217.99(a)

Table D.1. - Testing Requirements for an Alternative Wastewater Collection System

Component	Type of Test(s)
Interceptor Tank	Hydrostatic head test for tanks (HHT) or Vacuum test for tanks (VTT)
Buffer Tank	HHT or VTT
Vault, Pit, Wet Wells	HHT or VTT
Service Pipe (Pressure)	Pressure line test (PLT)
Service Pipe (SDES)	Hydrostatic head test for pipe (HHP)
Collection Pipe (Pressure)	PLT
Collection Pipe (SDES)	Low pressure air test for pipe (LPA) or HHP

Figure: 30 TAC §217.99(e)(1)

Equation D.8.

$$L = \frac{S \times D \times \sqrt{P}}{133200}$$

Where:

L = Leakage (gallons per hour)
S = Length of pipe (feet)
D = Inside diameter of pipe (inches)
P = Pressure (pounds per square inch), gage

Figure: 30 TAC §217.152(g)(3)

Equation F.1.

$$SWD = 160Q + 4$$

Where:

SWD = side water depth required (feet)
Q = annual average flow in million gallons per day, as determined in §217.31(a) of this title (relating to Applicability)

Figure: 30 TAC §217.154(b)(2)

Table F.1 -
Design Organic Loading Rates for Sizing Aeration Basins Based on Traditional Design Methods

Process	Applicable Permit Effluent Sets *Concentration milligrams per liter (mg/l)*			Maximum Organic Loading Rate *Pounds BOD_5/day/1,000 cubic feet (lbs/day/1,000cf)*
	BOD_5	**TSS**	**Ammonia Nitrogen**	
Conventional activated sludge process without nitrification	10	15	NA	45
	20	20	NA	
Conventional activated sludge process with nitrification when reactor temperatures exceed 15° C	10	15	3, 2, or 1	35
Conventional activated sludge process with nitrification When Reactor Temperatures are 13° to 15° C	10	15	3, 2, or 1	25
Conventional activated sludge process with nitrification when reactor temperatures are 10° to 12° C	10	15	3, 2, or 1	20
Extended aeration basins including oxidation ditches (MCRT over 20 days)	10	15	3, 2, or 1	15

Figure: 30 TAC §217.154(c)(1)

Table F.2. - Maximum Clarifier Overflow Rates Based Upon Traditional Design Methods

Applicable Permit Effluent Sets *concentration milligrams per liter (mg/l)*			**Aeration Basin Organic Loading** *(five-day biochemical oxygen demand (BOD_5 lbs/day)* (from Table F.1)	**Process - Treatment Level**	**Maximum overflow rate at 2-Hour Peak Flow** *(gallons/day/ square foot)*	**Minimum Detention Time at 2-Hour Peak Flow** *(hours)*
BOD_5	**TSS**	**NH_3-N**				
20	20		45	Fixed film - secondary or enhanced secondary	1200	1.8
10	15					
20	20		45, 35, 25 or 20	Activated sludge - secondary, enhanced secondary, or secondary with nitrification	1200	1.8
10	15					
10	15	3				
20	20		15	Extended air - secondary	900	2.0
10	15	3	15	Extended aeration - enhanced secondary	800	2.2

Figure: 30 TAC §217.155(a)(3)

Equation F.2.

$$O_2R = \frac{1.2(BOD_5) + 4.3(NH_3 - N)}{BOD_5}$$

Where:
O_2R = Oxygen requirement, lb O_2/ lb BOD_5
BOD_5 = BOD_5 concentration, mg/L
NH_3-N = Ammonia nitrogen, mg/L

Table F.3 - Minimum O_2R for Lower BOD_5 Loadings

Process	O_2R, pounds (lbs) O_2/lb BOD_5
Conventional Activated Sludge Systems that are not Intended to Nitrify	1.2
Conventional Activated Sludge Systems that are Intended to Nitrify and Extended Aeration Systems (including all Oxidation Ditch Treatment Systems)	2.2

Figure: 30 TAC §217.155(b)(1)

Table F.4. - Minimum Airflow Requirements for Diffused Air

Process	Airflow/BOD_5 load *standard cubic feet (SCF)/day/lb*
Conventional Activated Sludge Systems that are not Intended to Nitrify	1800*
Conventional Activated Sludge Systems that are Intended to Nitrify; and, Extended Aeration Systems	3200*
*These values were calculated using Equation F.3 in Figure: 30 TAC §217.155(b)(2)(A)(iv) with the following assumptions: a transfer efficiency of 4.0% in wastewater for all diffused air activated sludge processes; a diffuser submergence of 12 feet; a wastewater temperature of 20°C; and the oxygen requirements in Figure: 30 TAC §217.155(a)(3), Table F.3.	

Figure: 30 TAC §217.155(b)(2)(A)(iv)

Equation F.3.

$$FTE = (T_e) \times \left(\frac{WOTE}{CWOTE}\right) \times 1.024^{T-20} \times \left(\frac{C_f}{C_t}\right)$$

Where:

T_e =	Test Efficiency
FTE =	Field Transfer Efficiency (decimal)
WOTE =	Wastewater Oxygen Transfer Efficiency (decimal)
CWOTE =	Clean Water Oxygen Transfer Efficiency (decimal)
T =	Temperature (degrees C)
C_f =	Oxygen Saturation in Field (Includes temperature, dissolved solids, pressure, etc.)
C_t =	Oxygen Saturation in Test Conditions

Figure: 30 TAC §217.155(b)(2)(C)

Equation F.4.

$$RAF = \frac{(PPD\ BOD_5) \times (O_2/lb\ BOD_5)}{WOTE \times 0.23 \times 0.075 \times 1440}$$

Where:

RAF =	Required Airflowrate (standard cubic feet per minute (SCFM))
PPD BOD_5 =	Influent Organic Load in Pounds per Day
0.23 =	lb 0_2/lb air @ 20° C
1440 =	minutes/day
0.075 =	lb air/cubic foot (cf)
WOTE =	Wastewater Oxygen Transfer Efficiency (decimal) If the design inlet temperature is above 24° C, the specific weight of air must be adjusted to the specific weight at the intake temperature.

Figure: 30 TAC §217.155(b)(2)(D)

Table F.5. - Diffuser Submergence Correction Factors

Diffuser Submergence Depth *(feet)*	**Airflow Rate Correction Factor**
8	1.82
10	1.56
12	1.00
15	0.91
18	0.73
20	0.64

Figure: 30 TAC §217.155(b)(5)(A)(i)

Table F.6. - Minimum Diffuser Submergence Depth

Design Flow *(mgd)*	**Minimum Submergence Depth** *(feet)*
<0.01	8.0
0.01 to 0.10	9.0
>0.10	10.0

Figure: 30 TAC §217.157(b)(1)

Table F.7. Performance Standards for Conventional Pollutants and Nutrients

Parameter	Units	Expected Value
$CBOD_5$	*milligrams per liter (mg/l)*	5
TSS	*mg/l*	1
Ammonia	*mg/l as N*	1
Total Nitrogen (with only preanoxic zone)	*mg/l*	10
Total Nitrogen (with preanoxic and postanoxic zones)	*mg/l*	3
Total Phosphorous (with chemical addition)	*mg/l*	0.2
Total Phosphorous (with bio-P removal)	*mg/l*	0.5
Turbidity	*nephelometric turbidity units (NTU)*	0.2
Bacteria	*log removal*	≤ 6 log (99.9999%)
Viruses	*log removal*	≤ 3 log (99.9%)

Figure: 30 TAC §217.164(c)(3)

Table F.8. - Effect of Temperature on SRT, Net Solids Production, and Food to Mass Ratio

Temperature, (degrees C)	SRT, days	Net Solids Production, Y = .965-0.013(SRT)	Food/Mass Ratio, lbsBOD_5/lbs Suspend Solids/day = 1/(Y*SRT)
18	4.76	0.90	0.233
17	5.25	0.90	0.212
16	5.79	0.89	0.194
15	6.38	0.88	0.178
14	7.04	0.87	0.163
13	7.77	0.86	0.150
12	8.56	0.85	0.137
11	9.45	0.84	0.126
10	10.42	0.83	0.116
This table uses the maximum growth rate of *Nitrosomonas* calculated using Equations 3-14 from EPA Manual, *Nitrogen Control*, EPA/625/R-93/010, 9/93, p. 90, shown in Figure: 30 TAC §217.164(c)(4), Equation F.5.			

Figure: 30 TAC §217.164(c)(4)

Equation F.5.

$$SRT = \frac{SF}{0.47\, e^{0.098(T-15)}, days^{-1}}$$

Where:

SF =	safety factor
$0.47e^{0.098(T-15)}$ =	maximum growth rate ($days^{-1}$)
T =	temperature *T* (°C)

Figure: 30 TAC §217.164(c)(5)

Equation F.6.

$$V_a = \frac{1000000(CBODL)(Y)(SRT)}{62.4MLSS}$$

Where:

V_a =	Volume of aeration basin, cubic feet
CBODL =	Design CBOD load per day, pounds
Y =	yield of solids per unit CBOD removed
SRT =	required solids retention time, days
MLSS =	mixed liquor suspended solids, mg/l

Equation F.7.

$$V_a = \frac{1000CBODL}{\max allowable lb CBOD/kcf}$$

Where:

V_a =	Volume of aeration basin, cubic feet
CBODL =	Design CBOD load per day, pounds
max allowable lb CBOD/kcf =	Maximum pounds CBOD load/1000 cubic feet

Figure: 30 TAC §217.164(e)

Equation F.8.

$$A_c = \frac{1{,}000{,}000 Q_p}{OR_p}$$

Where:

A_c = area of the clarifier(s), sf

Q_p = peak flow, mgd

OR_p = overflow rate (gpd/sf) from Figure 1: 30 TAC §217.164(e)(2)(I), Table F.9

Figure: 30 TAC §217.164(e)(1)

Equation F.9. Clarifier Volume Based on SWD

$V_c = A_c\ (minSWD)$

Where:

$V_{c,}$ = volume of the clarifier(s), cf, based on minSWD

A_c = Area of the clarifier(s), sf

minSWD = 10 ft, except as allowed in §217.152(g)

Equation F.10. Clarifier Volume Based On Minimum Detention Time

$$V_c = \frac{(Q_p / 24)(minDT)}{(7.48)}$$

Where:

$V_{c,}$ = volume of the clarifier(s), cf, based on minDT

Q_p = peak flow, gpd

minDT = minimum detention time (hours) from Figure 1: 30 TAC §217.164(e)(2)(I), Table F.2

Figure: 30 TAC §217.164(e)(2)(A)

Equation F.11. Clarifier Area Based on Design Flow

$$A_c = \frac{Q_d}{OR_{T9}}$$

Where:

A_c =	clarifier area (sf) based on max 30 day flow
Q_d =	design flow (gpd)
OR_{T9} =	overflow rate for selected underflow rate and MLSS (gpd/sf) from Figure 1: 30 TAC §217.164(e)(2)(I), Table F.9

Equation F.12 Clarifier Area Based on Peak Flow

$$A_c = \frac{Q_p}{OR_{T10}}$$

Where:

$A_{c,}$ =	clarifier area (sf), based on 2-hr peak flow
Q_p =	peak flow, mgd
OR_{T10} =	overflow rate for selected MLSS (gpd/sf) from Figure 2: 30 TAC §217.164(e)(2)(I), Table F.10

Figure: 30 TAC §217.164(e)(2)(C)

Equation F.13.

$$MLSS_{pf} = \frac{UR_{T11} * RSSS_{T11}}{OR_{pf} + UR_{T11}}$$

Where:

UR_{T11} =	Underflow rate (gpd/sf) from Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11
OR_{pf} =	Overflow rate at 2-hr peak flow (gpd/sf)
$MLSS_{pf}$ =	Diluted MLSS during peak flow (mg/l)
$RSSS_{T11}$ =	Maximum return sludge concentration for the selected UR (mg/l) from Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11

Figure: 30 TAC §217.164(e)(2)(D)

Equation F.14.

$$SBD = \frac{V_a(MLSS_{av} - MLSS_{pf})}{(A_c BKSS)} + 1.0$$

Where:

SBD =	Sludge Blanket Depth (feet)
V_a =	Volume of aeration basins (cf)
A_c =	Area of clarifier (sf)
$MLSS_{pf}$ =	Diluted MLSS during peak flow (mg/l)
$MLSS_{av}$ =	Diluted MLSS during average flow (mg/l)
BKSS =	Blanket concentration at the selected underflow rate (mg/l)from Figure 3: 30 TAC §217.164(e)(2)(I), Table F.11
1.0 =	Assumed sludge blanket depth during design flow conditions (feet)

Figure: 30 TAC §217.164(e)(2)(E)(iii)

Equation F.15.

$$SWD_{DT} = \frac{OR_p(DT)}{180}$$

Where:

OR_p =	Overflow rate at peak flow (gpd/sf)
DT =	Detention time, hours
SWD_{DT} =	Side water depth based on detention time, ft

Figure: 30 TAC §217.164(e)(2)(F)

Equation F.16.

$$V_c = A_c(SWD)$$

Where:

V_c =	Volume of Clarifier, (cf)
A_c =	Area of the Clarifier, (sf)
SWD =	Side Water Depth determined in subparagraph (E) of this paragraph, (feet)

Figure: 30 TAC §217.164(e)(2)(G)(i)

Equation F.17.

$$OR_{T10} = 5053.8(1 - fv/100)^{3.83}\ gpd/sf$$

Where:

OR_{T10}	Settling velocity(gpd/sf) of Figure 2: 30 TAC §217.164(e)(2)(I), Table F.10
fv	Floc Volume (percent) = SVI(MLSS)/10,000 SVI (ml/g), MLSS (mg/l)

Figure: 30 TAC §217.164(e)(2)(G)(ii)

Equation F.18.

$$OR_{T10} = 9003610(fv^{-2.56})gpd/sf$$

Where:

OR_{T10} =	Settling velocity(gpd/sf) of Figure 2: 30 TAC §217.164(e)(2)(I), Table F.10
fv =	Floc Volume (percent) = SVI(MLSS)/10,000 SVI (ml/g), MLSS (mg/l)

Figure: 30 TAC §217.164(e)(2)(H)

Equation F.19.

$$RSSS_m = \frac{10170000(UR^{-0.391})}{SVI}$$

Where:

$RSSS_m$ =	Return Sludge Suspended Solids (mg/l)
UR =	Underflow Rate (gpd/sf)
SVI =	Sludge Volume Index (ml/g)

Figure 1: 30 TAC §217.164(e)(2)(I)

Table F.9. - Clarifier Loading Rates

Allowable surface loading rates for given underflow rates with no provisions for sludge storage in the clarifier

OR

The maximum surface loading rate at the design flow for clarifiers designed to store solids during peak events

MLSS	**Underflow Rate (gpd/sf)**				
mg/l	***200***	***250***	***300***	***350***	***400***
2000	1081	1218	1340	1452	1554
2100	1020	1148	1262	1366	1461
2200	965	1084	1191	1288	1377
2300	914	1026	1126	1217	1299
2400	868	973	1067	1151	1229
2500	825	924	1012	1091	1163
2600	786	879	962	1036	1103
2700	749	837	915	985	1048
2800	715	798	872	937	996
2900	684	762	831	893	948
3000	654	729	793	851	903
3100	627	697	758	812	861
3200	601	667	725	776	821
3300	577	640	694	742	784
3400	554	613	665	710	750
3500	532	589	637	680	717
3750	483	533	575	611	42
4000	441	484	520	551	577
4250	403	441	472	498	520
4500	369	402	429	451	469
4750	340	368	391	409	423
5000	313	337	356	371	82

Figure 2: 30 TAC §217.164(e)(2)(I)

Table F.10. - Settling Velocities

Maximum allowable clarifier overflow rate allowed for clarifiers that are designed to store solids SVI=100 *(minimum allowable SVI)*	
MLSS **(mg/l)**	**Surface Loading Rates (gpd/sf.)**
2000	2000
2150	2000
2200	1952
2300	1858
2400	1767
2500	1680
2600	1596
2700	1514
2800	1437
2900	1362
3000	1290
3100	1220
3200	1154
3300	1090
3400	1029
3500	971
3750	836
4000	715
4250	611
4500	528
4750	459
5000	403

Figure 3: 30 TAC §217.164(e)(2)(I)

Table F.11. - Values for Use in Determining Sludge Storage Requirements

Underflow (gpd/sf)	200	250	300	350	400
RSSS maximum (mg/l)	12813	11743	10935	10295	9771
Blanket concentration (mg/l)	7816	7163	6670	6280	5961
Blanket (lb/cf)	0.488	0.447	0.416	0.392	0.372

Figure: 30 TAC §217.182(c)

Table G.1. - Typical Design Loadings

	Standard Rate	Intermediate Rate	High Rate	High Rate	Roughing
Media	***Rock***	***Rock***	***Rock***	***Manufactured***	***Either***
Hydraulic Loading: mgd/acre	1-4	4-10	10-40	15-90	60-180
Hydraulic Loading: gpd/sf	25-90	90-230	230-900	350-1000	1400-4200
*Organic Loading: lb BOD_5/acre-feet/day	200-1000	700-1400	1000-1300	--	--
*Organic Loading: lb BOD_5/day/1000cf	5-25	15-30	30-150	up to 300	≥100
¤BOD_5 Removal (%)	80-85	0-70	40-80	65-85	40-85
*Does not include recirculation ¤ Includes subsequent settling					

Figure: 30 TAC §217.182(g)(3)

Table G.2 - Trickling Filter Dosing Intensity Ranges (SK)

BOD_5 loading *kilogram (kg)/m^3/day*	**Design SK** *mm/pass*	**Flushing SK** *mm/pass*
0.25	10-100	≥200
0.50	15-150	≥200
1.00	30-200	≥300
2.00	40-250	≥400
3.00	60-300	≥600
4.00	80-400	≥800

Figure: 30 TAC §217.182(g)(4)

Equation G.1.

$$SK = \frac{(q + r) \times (1000mm/m)}{(a) \times (n) \times (60)}$$

Where:

SK = dosing intensity, millimeter (mm)/pass of an arm

Q = influent flow/filter top surface area, in cubic meters (m^3)/ square meter (m^2)/hour

R = recycle flow/filter top surface area, m^3/m^2/hour

A = number of arms

N = revolutions per minute

Figure: 30 TAC §217.182(n)(5)

Equation G.2.

$$MAFR = \frac{(R_A) \times (L) \times (P_F)}{1440 \text{min}/day}$$

Where:

MAFR = Minimum airflow rate, scfm

R_A = Aeration rate, scf/lb, Table G.3

L = Loading rate, lb/day, Table G.3

P_F = Loading peaking factor

Table G.3 - Aeration Rate and Loading Rate Factors

Filter Application	R_A (scf/lb BOD_5)	L (lb BOD_5/1000 cf/day) Loading on the filter
Roughing Filter at 75-200 lb BOD_5/1000 cf/day	1080	BOD_5
Secondary Treatment Filter at 25-50 lb BOD_5/1000 cf/day	1200	BOD_5
Combined or Tertiary Filter	2400	1.25 * BOD_5 + 4.6 * total Kjeldahl nitrogen (TKN)

Figure: 30 TAC §217.191(b)(4)

Table G.4 - Minimum Filter Depths for Deep Bed, Intermittently Backwashed Filters

Filter Type	Type of Media	Effective Particle Size (millimeters)	Minimum Depth (inches)
Single Media	Sand	1.0-4.0	24
Dual Media	Anthracite & Sand	1.0-4.0	16 total
	Anthracite	*1.0-2.0*	*10*
	Sand	*0.5-1.0*	*6*
Mixed Media	Anthracite, Sand & Other	1.0-4.0	16 total
	Anthracite	*1.0-2.0*	*10*
	Sand	*0.6-0.8*	*4*
	Garnet or Similar Material	*0.3-0.6*	*2*

Figure: 30 TAC §217.192(b)

Table G.5. - Filter Depths for Multi-Compartmented, Low Head, Automatic Backwash Filters

Filter Type	Type of Media	Effective Particle Size *(millimeters)*	Minimum Depth *(inches)*
Single Media	Sand	0.55-0.65	11
Dual Media	Anthracite & Sand	0.55-0.65	16
	Anthracite	*1.0-2.0*	*10*
	Sand	*0.5-1.0*	*6*

Figure: 30 TAC §217.206(e)

Equation H.1.

$$E = \frac{1}{1 + K(\frac{V}{Q})}$$

Where:

E = % BOD_5 removal in aerated lagoon

K = first order removal rate constant, day^{-1}

V = aeration basin volume, million gallons

Q = influent wastewater flow rate, million gallons per day.

Figure: 30 TAC §217.206(e)(2)

Equation H.2.

$$K_T = K_{20} \times 1.06^{T-20°C}$$

Where:

K_T =	the lowest average water temperature during any 30-day period.
K_{20} =	K value at 20EC
T =	lowest average water temperature (EC) expected during any 30-day period

Figure: 30 TAC §217.210(i)(2)

Equation H.3.

$$C_0 = C^* + (C_i - C^*) \exp^{-\frac{Ka}{0.0365Q}}$$

Where:

C_i	influent five-day biochemical oxygen demand (BOD_5) concentration, mg/l
C_o	target effluent BOD_5 concentration, mg/l
C*	wetland background limit, mg/l (for TSS, $C^* = 5.1 = 0.16C_i$) (for BOD_5, $C^* = 3.5 + 0.053\ C_i$)
K	first-order areal rate constant: (34 meters/year (m/yr)) @ 20^B C for BOD_5)
a	is required wetland area, hectacre (ha) (1,000 m/yr @ 20^B C for total suspended solids (TSS)) (active treatment area, not including dike, buffers, etc.)
Q	design flow in cubic meters per day (m^3/d)

Figure 1: 30 TAC §217.211(e)(3)(B)

Equation H.4. Darcy's Law.

$$Q = K_s \times A \times S$$

Where:

Q =	Design flow (gallons/day)
K_S =	Media hydraulic conductivity (gallons/square foot/day) (see Figure 2: 30 TAC §217.211(e)(3)(B), Table H.1)
S =	Hydraulic gradient (foot/foot)
A =	Cross sectional area perpendicular to the flow (square feet)

Figure 2: 30 TAC §217.211(e)(3)(B)

Table H.1 - Typical Media Characteristics

Media	Effective Size *(inches)*	Porosity *(%)*	Hydraulic Conductivity *(gallons/square foot/day)*
Fine Gravel	5/8	38	185,000
Medium Gravel	1.25	40	250,000
Coarse Rock	5.0	45	2,500,000

Figure: 30 TAC §217.211(g)(2)

Equation H.5.

$$C_0 = C^* + (C_i - C^*)\exp^{-\frac{Ka}{0.0365Q}}$$

Where:

C_i = influent five-day biochemical oxygen demand (BOD_5) concentration, mg/l

C_o = target effluent BOD_5 concentration, mg/l

C^* = wetland background limit, mg/l
(for TSS, $C^* = 5.1 = 0.16C_i$)
(for BOD_5, $C^* = 3.5 + 0.053C_i$)

K = first-order areal rate constant: (180 m/yr @ 20^B C for BOD_5)

a = is required wetland area, ha (3,000 m/yr @ 20^B C for TSS)
(active treatment area, not including dike, buffers, etc.)

Q = design flow in m^3/d

Figure: 30 TAC §217.243(e)

Table J.1. Sludge Processing Minimum Pipe Diameter

Pipe	Diameter
Sludge drainpipe	4.0 inches
Pipe in a sludge digester	4.0 inches
Suction pump pipe	4.0 inches
Discharge pipe	4.0 inches
Gravity withdrawal pipes associated with an anaerobic digester or gravity thickener	6.0 inches

Figure: 30 TAC §217.249(t)(4)(B)

Table J.2. - Minimum Detention Times for Aerobic Digesters

Temperature (Degrees Celsius)	Total Detention Time
15°	60 days
20°	40 days

Figure: 30 TAC §217.250(e)(2)(A)(ii)

Table J.3. - Surface Area Requirements for Sludge Drying Beds

Stabilization Process	Pounds Digested Dry Solids *per square foot per year*
Anaerobic Digestion	20.0
Aerobic Digestion	15.0

Figure: 30 TAC §217.250(e)(4)(A)

Table J.4 - Filtration Rates

Type of Treatment	Pounds of Dry Solids *per square foot per hour (minimum-maximum)*
Primary	4-6
Primary and Trickling Filter	3-5
Primary and Activated Sludge	3-4

Figure: 30 TAC §217.272(a)

Equation K.1.

$$PPD = Q \times D \times 8.34$$

Where:

PPD = Pounds (lbs) per day of Cl2 or SO_2 required for treatment

Q = Peak 2 hour flow (millions of gallons per day)

D = Cl_2 concentration from Table K.1 in Figure: 30 TAC §217.272(b), or SO_2 dosage needed to dechlorinate the expected Cl_2 residual

8.34 = conversion factor

Figure: 30 TAC §217.272(b)

Table K.1. - Minimum Design Cl_2 Concentration Needed for Disinfection

Type of Effluent	Cl_2 Concentration *milligrams per liter (mg/l)*
Primary	15
Fixed Film	10
Activated Sludge	8
Tertiary Filtration Effluent	6
Nitrified Effluent	6

Figure: 30 TAC §217.273(a)(1)

Equation K.2.

$$W_g = (T_A - T_{th}) \times F$$

Where:

T_A = Low ambient temperature, EF

T_{th} = Threshold temperature, EF

F = Withdrawal factor, lb/EF/day

W_g = Maximum gas withdrawal rate per cylinder, lb/day

Table K.2 - Threshold Temperatures and Withdrawal Rates for Cl_2 And SO_2 - *

Gas and Cylinder Size	Withdrawal Factor, (F) lb/EF/day	Threshold Temperature, (T_{th}) for Cylinder Mounted Vacuum Regulator, EF	Threshold Temperature, (T_{th}) for Manifold Systems at 10-15 psig pressure, EF
150-lb Cl_2 Cylinder	1.0	0	10
1-ton Cl_2 Cylinder	8.0	0	10
150-lb SO_2 Cylinder	0.75	30	40
1-ton SO_2 Cylinder	6.0	30	40
* - Values from the *Handbook of Chlorination*, Second Edition, White, Reinhold			

Figure: 30 TAC §217.273(b)

Equation K.3.

$$Cyl = \frac{PPD}{W_{gl}}$$

Where:

Cyl = minimum number of cylinders required per bank (round up to the nearest whole number)

PPD = lb/day of chemical required as determined in Figure: 30 TAC §217.272(a), Equation K.1

$W_{g,l}$ = lb/day of chemical that may be withdrawn per cylinder as determined in Figure: 30 TAC §217.272(a), Equation K.1 or Figure: 30 TAC §217.273(a)(1), Equation K.2.

Figure: 30 TAC §217.280(b)(1)(C)

Equation K.4.

$$R = \frac{PPD}{24C}$$

Where:

R = minimum size of chemical metering equipment, (gal/hr)

PPD = pounds per day of Cl_2 that must be delivered to the wastewater, (lb/day)

C = pounds of available Cl_2 in one gallon of NaClO, (lb Cl_2/gal)

Figure: 30 TAC §217.280(b)(2)(C)

Equation K.5.

$$R = \frac{\text{lbs } NaHSO_3}{10.9 \text{ lbs } NaHSO_3/\text{gallon } NaHSO_3}\left(\frac{1}{S}\right) \times 24$$

Where:

S = solution strength in percent

R = gallons per hour of $NaHSO_3$ solution

Figure: 30 TAC §331.42(b)

$r = (2.25\ KHht / S10^{x})^{1/2}$

Where:

$x = 4\ \pi KH\ (h_w - h_{bo} x\ S_pG_b\ ) / 2.3\ Q$

r = radius of endangering influence from injection well (length)

K = hydraulic conductivity of the injection zone (length/time)

H = thickness of the injection zone (length)

t = time of injection (time)

S = storage coefficient (dimensionless)

Q = injection rate (volume/time)

h_{bo} = observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water

h_w = hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water

S_pG_b = specific gravity of fluid in the injection zone (dimensionless)

π = 3.142 (dimensionless)

The above equation is based on the following assumptions:

(1) the injection zone is homogenous and isotropic;

(2) the injection zone has infinite area extent;

(3) the injection well penetrates the entire thickness of the injection zone;

(4) the well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

(5) the emplacement of fluid into the injection zone creates instantaneous increase in pressure.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Public Hearing: Proposed Asian Citrus Psyllid Quarantine Rules

The Texas Department of Agriculture (the department) will hold a hearing to take public comment on the department's proposed Asian Citrus Psyllid Quarantine rules, Title 4, Part 1, §§19.410 - 19.413, which were published in the Friday, February 22, 2008, issue of the *Texas Register* (33 TexReg 1475).

The hearing will be held on March 14, 2008, beginning at 10:00 a.m., at the Stephen F. Austin State Office Building, 1700 North Congress, Room No. 1003A, Austin, Texas.

For more information regarding the hearing, please contact Dr. Shashank Nilakhe, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-1145.

TRD-200801311
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: March 5, 2008

♦ ♦ ♦

Department of Assistive and Rehabilitative Services

Notice of Request for Comments on Annual Application for Federal Funds for Early Childhood Intervention

The Department of Assistive and Rehabilitative Services (DARS), Division for Early Childhood Intervention, is soliciting comments related to its annual application for federal funds for early childhood intervention. DARS will be requesting funding under the Individuals with Disabilities Education Act, Part C for federal fiscal year 2008. The funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs on May 7, 2008. The application can be viewed on the DARS web site at: http://www.dars.state.tx.us. To request copies of the annual funding application or to make comments concerning early childhood intervention contact:

Cynthia Henderson, Policy Specialist, Early Childhood Intervention, Department of Assistive and Rehabilitative Services, 4900 North Lamar Blvd., Austin, TX 78751-2399, Mail Code 3029.

TRD-200801184
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Department of Assistive and Rehabilitative Services
Filed: February 28, 2008

♦ ♦ ♦

Office of the Attorney General

Notice of Contract Award

This publication is filed pursuant to Texas Government Code, §2254.030. The Request for Proposal was published in the December 21, 2007 issue of the *Texas Register* (32 TexReg 9825).

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General of Texas (the "OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate.

Contractor will prepare Indirect Cost Allocation Plans for FY07 (based on actual expenditures) and for FY09 (based on budgeted expenditures) in accordance with OMB Circular A-87, for submission to HHS for federal approval and will negotiate approval of those plans with HHS.

Contractor also will analyze existing OAG legal billing rates for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY09 billing rates for legal services. Contractor will negotiate with HHS for approval of the FY09 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of these plans and billing rates.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is MGT of America, Inc., whose business address is 502 E. 11th Street, Suite 300, Austin, TX 78701.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is $44,575. The term of the contract began on March 3, 2008, and will terminate on August 31, 2008, or upon completion of work described herein.

DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plans must be submitted to HHS no later than April 30, 2008. The final report regarding the FY09 billing rates for legal services must be submitted to the OAG no later than August 31, 2008.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200801310
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 5, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 22, 2008, through February 28, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 5, 2008. The public comment period for this project will close at 5:00 p.m. on April 4, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: FG&W Cattle Company; Location: The project is located in Rudasil Cut, just east of FM 2031, in Matagorda, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Matagorda, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 210224; Northing: 3172016. Project Description: The applicant proposes to fill 0.26 acre of wetlands to construct a 200-square-foot boat ramp extending into Rudasil Cut for launching kayaks, and an 11,000-square-foot parking area adjacent to the ramp. To compensate for impacts to wetlands, the applicant proposes to restore 0.26 acre of emergent marsh approximately 0.5 mile east of the proposed project area. The applicant proposes to plant plugs of smooth cordgrass (Spartina alternaflora) in shallow (less than 1.5 feet deep) open-water areas along the eastern boundary of the property adjacent to East Matagorda Bay. Plugs will be planted on 10-foot centers and contain viable root-rhizome stock. Planting is proposed to occur in early spring (April/May 2008) to allow maximum growth and expansion. CCC Project No.: 08-0087-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1916 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: AGL Resources; Location: The project is located in Beaumont, Jefferson and Orange Counties, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Beaumont East and Terry, Texas. The GTS dual 24-inch diameter pipeline header facility under this individual permit application starts at MP 0.60 extending to the Texas Eastern Gas Transmission Company (TETCO) meter station at MP 7.41, with a single 24-inch diameter pipeline extending from MP 7.41 to the terminus of the pipeline at the Florida Gas Transmission (FGT) meter station at MP 8.84 (see Figure 1). Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Northing - beginning: 3,322,110; end: 3,326,991 Easting - beginning: 397,270; end: 408,215 and, Latitude - beginning: 94 degrees 4' 25.62"; end: 93 degrees 57' 8.25" Longitude - beginning: 30 degrees 1' 25.79"; end: 30 degrees 4' 14.16". Project Description: The applicant proposes to construct an 8.9-mile natural gas pipeline, extending northeast into Orange County, Texas. The project includes a crossing of the Neches River, a navigable waterbody, as well as temporary and permanent wetland fill. A total of 11.02 acres of wetlands will be permanently impacted, including 10.66 acres of forested wetlands and 0.36 acre of palustrine emergent wetlands.

The applicant proposes to provide compensation for all impacts to jurisdictional and non-jurisdictional wetlands through the preservation of 75 acres of high quality forested wetlands and 2.5 acres of palustrine emergent wetlands. The proposed mitigation site is located approximately four miles north of the GTS Project area. This wetland mitigation preservation area will be entered into a conservation easement with the Sabine Neches Conservation, Inc. for perpetual preservation. The mitigation plan incorporates the following components: Mitigation for jurisdictional and non-jurisdictional permanently impacted wetlands; Compensation for all permanently impacted wetlands on a 7:1 ratio; Mitigation area within the same watershed as impacted wetlands; Mitigation area in close proximity (approximately four miles north) to permanently impacted wetlands; Acquisition of 75 acres of high quality forest wetlands (Cypress tupelo) located in the proximity of the project, which will be entered into a conservation easement with the Sabine Neches Conservation, Inc. This would provide compensatory mitigation for 10.66 acres of permanent impacts to bottomland hardwood forest wetlands and mixed pine-hardwood forest wetlands; and Acquisition of 2.5 acres of high quality emergent wetlands which will be entered into a conservation easement with the Sabine Neches Conservation, Inc. This would provide compensatory mitigation for 0.36 acre of permanent impacts to palustrine emergent wetlands.

Monitoring the success of the wetland restoration for temporarily affected wetlands will be conducted for three years or until the revegetation is considered to be successful as described in FERC's *Wetland and Waterbody Construction and Mitigation Procedures*. Revegetation shall be considered successful if the cover of herbaceous and/or woody species is at least 80 percent of the type, density, and distribution of the vegetation in adjacent wetland areas that were not disturbed by construction.

Areas within the pipeline construction corridor and associated work areas will be restored to pre-project contours. Pre and post-construction elevation surveys will be conducted. Elevation survey results will be submitted to the U.S. Army Corps of Engineers (Corps) within 90 days after completion of pipeline installation. Additional soil from offsite may be brought into areas containing highly organic soils susceptible to high erosion rates.

Aerial photography with Geographic Information System (GIS) analysis will be used to monitor the entire pipeline construction corridor and an additional 200-meter buffer zone (100 meters paralleling each side of the construction corridor). The following GIS/Remote Sensing method and standard will be used: The pipeline corridor will be monitored by pre- and post-construction aerial photography (taken 12 months after construction completion to allow for vegetative regrowth) at a scale of 1:4800 or 1 inch to 400 feet. GIS and Remote Sensing techniques will be used to conduct an analysis of change to determine the amount of vegetated marsh impacted by pipeline construction activities.

Monitoring reports will be submitted that include at a minimum: (1) a pre-project GIS analysis assessing the pre-construction conditions of wetland vegetation within the permitted corridor (which includes the construction corridor and the 200-meter buffer zone); (2) a post-project GIS analysis assessing the pre-construction conditions of wetland vegetation within the permitted corridor (which includes the construction corridor and the 200-meter buffer zone); (3) Ortho corrected imagery covering the construction corridor and buffer zone, maximum of 6-inch pixel size and Color Infra-red imagery, about 2 meter spatial accuracy; (4) all vector deliverable to be in ESRI Shapefile(tm) format with Federal Geographic Data Committee (FGDC) compliant metadata and all raster imagery in GeoTIFF format with FGDC compliant metadata. A binary classification system will be used consisting of open water and vegetated areas. The classified data will meet or exceed 90 per-

cent attribute accuracy as determined by industry standard and verified by statistically valid ground truth sampling techniques - this may include Global Positioning System based ground surveys. Monitoring reports will be submitted to the Corps, detailing the results from the pre- and post-GIS analysis and the above referenced data sets, within 90 days after completion of the 12-month interval between the pre- and post-construction analysis. CCC Project No.: 08-0088-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1943 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200801301
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 4, 2008

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Comptroller of Public Accounts

Notice of Public Hearing on Proposed Texas Procurement and Support Services Office

The Office of the Comptroller of Public Accounts will hold a public hearing regarding proposed amendments to 34 Texas Administrative Code, §20.52, Advisory Committees, on Monday, March 24, 2008, at 1:30 p.m. in Room 114 of the LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774-0100. The proposed amendments to the rule were published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1273).

Pursuant to Government Code, §2155.0012, the comptroller is holding this hearing in accordance with the requirements of Government Code, §2001.029. Questions concerning the public hearing or this notice should be referred to Ron Pigott, Deputy General Counsel for Texas Procurement and Support Services. Phone Number: (512) 463-5038. E-mail address: ron.pigott@cpa.state.tx.us. Fax Number: (512) 475-0851.

NOTICE FOR PERSONS WITH DISABILITIES

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, also non-English speaking persons who may need assistance are requested to contact Joe Cheavens, 1-800-531-5441, Extension 3-2650, at least two (2) working days prior to the hearing so that appropriate arrangements may be made.

TRD-200801285
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: March 4, 2008

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Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on January 24, 2008, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: SHAWN MCROBERTS - TERRELL, TX; MEREDITH GARCIA - PFLUGERVILLE, TX; ANNIE PARK - AUSTIN, TX; ROBIN WASHINGTON - DESOTO, TX; DRIANNE ALFARO - CARROLLTON, TX; MICHAEL NAVARRO - FLOWER MOUND, TX; LINDSY CONRAD - DALLAS, TX; ALEXIS MORRIS - HUMBLE, TX; ANGELIQUE WHORTON - IRVING, TX; VERONICA NAVARRO - ARLINGTON, TX; NANCY ELEBY - PROTER, TX; MONICA GAYNOR - WEATHERFORD, TX; AMY ST. AMANT - PLANO, TX; REBECCA WALSTON - LITTLE ELM, TX; GABRIELA FLORES - SAN ANTONIO, TX; BRYNNA MCGEE - LEWISVILLE, TX; ANGELA ROBERTSON - WHITE OAK, TX; ANDREW SUTTON - KINGWOOD, TX; CINDY JOHNSON - HENDERSON, TX; AND ANGELA HOWARD - SAN ANTONIO, TX.

Following the examination of applicants on January 24, 2008, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: SHAWNA MILLS - ARLINGTON, TX; SHAWNA MILLS - ARLINGTON, TX; AND KAREN WAVADA - MESQUITE, TX.

TRD-200801265
Sheryl Jones
Administrator of Licensing
Court Reporters Certification Board
Filed: March 3, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 14, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction

or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 14, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Raymond Allen; DOCKET NUMBER: 2008-0185-WOC-E; IDENTIFIER: RN105379150; LOCATION: Canyon, Randall County, Texas; TYPE OF FACILITY: landfill operator; RULE VIOLATED: 30 Texas Administrative Code (TAC) §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: City of Cameron; DOCKET NUMBER: 2007-1832-WQ-E; IDENTIFIER: RN101607828; LOCATION: Milam County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010004001, Permit Conditions Number 2(g), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $1,150; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Carrier Corporation; DOCKET NUMBER: 2007-1927-AIR-E; IDENTIFIER: RN102775095; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: refrigeration and heating equipment manufacturing; RULE VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the 2005 annual emissions inventory update; PENALTY: $950; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Leon Heijligers dba Center Point Dairy, LLP; DOCKET NUMBER: 2007-1352-AGR-E; IDENTIFIER: RN101917771; LOCATION: Hopkins County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.38(e)(5) and (g)(2), by failing to maintain the retention control structure in compliance with the technical standards developed by the Natural Resources Conservation Service; 30 TAC §321.44(a) and Concentrated Animal Feeding Operation (CAFO) General Permit Number TXG920161, Parts III.A.5 and IV.B.5, by failing to collect a sample and notify the appropriate regional office within 24 hours of the occurrence of a discharge; and 30 TAC §321.31(a) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the operations of a CAFO; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Christ Community Church of Houston dba Christ Community Church; DOCKET NUMBER: 2007-1284-PWS-E; IDENTIFIER: RN104415914; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e), by failing to submit water system "as built" plans and specifications prepared by a licensed, professional engineer to the commission for review and approval; and 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above the elevation of the finished floor of the pump room or the natural ground surface with a minimum of one inch above the sealing block or pump motor foundation block; PENALTY: $210; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2007-1547-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 49138, Special Condition (SC) 1, and THSC, §382.085(b), by failing to maintain the annual 12-month rolling average limit for volatile organic compound emissions; PENALTY: $31,375; Supplemental Environmental Project (SEP) offset amount of $12,550 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Georgia Gulf Chemicals & Vinyls, LLC; DOCKET NUMBER: 2007-1616-IHW-E; IDENTIFIER: RN100213958; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the unauthorized disposal of hazardous waste; 30 TAC §335.69(a)(1)(B) and 40 Code of Federal Regulations (CFR) §265.192(a) and §265.193(a)(1), by failing to provide secondary containment for a tank storing hazardous waste and by failing to have a written assessment from a qualified Professional Engineer attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste; 30 TAC §335.6(c), by failing to update the notice of registration (NOR); and 30 TAC §335.9(a)(2), by failing to maintain an accurate annual waste summary in 2006; PENALTY: $29,510; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Haldor Topsoe, Inc.; DOCKET NUMBER: 2007-1788-AIR-E; IDENTIFIER: RN101211498; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: catalyst manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Permit Number 21178, SC Number 1, and THSC, §382.085(b), by failing to comply with the 0.41 pound/hour (lb/hr) carbon monoxide (CO) emissions limit; PENALTY: $3,350; Supplemental Environmental Project (SEP) offset amount of $1,340 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Ross B. Harbaugh; DOCKET NUMBER: 2008-0187-WOC-E; IDENTIFIER: RN103653168; LOCATION: Canyon, Randall County, Texas; TYPE OF FACILITY: land operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Hilco United Services, Inc.; DOCKET NUMBER: 2008-0022-PWS-E; IDENTIFIER: RN102693108; LOCATION: Itasca, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i), TCEQ Agreed Order Docket Number 2004-1190-PWS-E, Ordering Provision Number 2.b.ii., and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(f)(2), by failing to keep on file and make available for commission review all water system operating records; PENALTY: $1,387; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2007-1279-AIR-E; IDENTIFIER: RN100238708; LOCATION: near Alvin, Brazoria County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(3), 116.115(c), and 116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, NSR Permit Number 2866C, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(1) - (3), 116.715(a), and 122.143(4), 40 CFR §60.18(c)(3)(ii) and §63.11(b)(6)(ii), Federal Operating Permit (FOP) Number O-02327, Special Terms and Conditions (STC) 1A and 19, Flexible Permit Number 95/PSD-TX-854, SC Number 11A, and THSC, §382.085(b), by failing to maintain a minimum header net heating value of 300 British thermal units per standard cubic foot; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), FOP Number O-02327, STC 19, Flexible Permit Number 95/PSD-TX-854, SC Number 13, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §117.310(c)(2) (formerly 30 TAC §117.206(e)(2)), and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §117.310(c)(1)(A) (formerly 30 TAC §117.206(e)(1)(A)), and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(2) and (3), 115.112(a)(1), 116.715(a), and 122.143(4), 40 CFR §63.119(b)(1), FOP Number O-02327, STC 1A, 4, and 19, Flexible Permit Number 95/PSD-TX-854, SC Number 5, and THSC, §382.085(b), by failing to prevent the landing of the internal floating tank roof; 30 TAC §115.112(a)(1) and §122.143(4), FOP Number O-02327, STC 1A and 4, and THSC, §382.085(b), by failing to prevent the landing of the internal floating tank roof; 30 TAC §117.8100(b)(1) and (b)(2) (formerly 30 TAC §117.213(f)(3)) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to prevent a greater than 5% down-time for the predictive emissions monitoring system (PEMS); 30 TAC §§101.20(3), 116.715(a), and 122.143(4), FOP Number O-02327, STC 19, Flexible Permit Number 95/PSD-TX-854, SC Number 1 and General Condition Number 8, and THSC, §382.085(b), by failing to maintain 12-month rolling average for nitrogen oxides emissions; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(3), 116.715(a), and 111.111(a)(1)(B), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(2) and (3), 115.352(4), 116.115(c), 116.715(a), and 122.143(4), 40 CFR §61.242-6(a) and §63.167(a)(1), FOP Number O-02327, STC 1A and 19, Flexible Permit Number 95/PSD-TX-854, SC Numbers 34E and 4, NSR Permit Number 2866C, SC Number 4E, NSR Permit Number 489, SC Number 5E, and THSC, §382.085(b), by failing to plug or cap open-ended lines; 30 TAC §117.310(f) (formerly 30 TAC §117.206(i)) and §122.143(4), FOP Number O-02327, STC 7A, and THSC, §382.085(b), by failing to prevent operation of a diesel engine; 30 TAC §116.115(c) and §122.143(4), FOP Number O-02327, STC 19, NSR Permit Number 2798, SC Number 4B, and THSC, §382.085(b), by failing to prevent a boiler from exceeding the permitted firing rate; 30 TAC §116.115(c) and §122.143(4), FOP Number O-02327, STC 19, NSR Permit Number 9517, SC Number 1, and THSC, §382.085(b), by failing to prevent a boiler from exceeding the permitted firing rate; 30 TAC §117.345(b)(2) (formerly 30 TAC §117.219(b)(2)) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to submit the Post-PEMS report within 15 days following the completion of the test; 30 TAC §122.222(k)(2) and THSC, §382.085(b), by failing to include emission points and their associated emissions in a FOP; 30 TAC §117.345(f)(10) (formerly 30 TAC §117.219(f)(10)) and §122.143(4), FOP Number O-02327, STC 1A and 7E, and THSC, §382.085(b), by failing to consistently record the start/stop or run times for diesel engines; 30 TAC §117.8130 (formerly 30 TAC §117.214(a)(1)) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to adequately monitor the ammonia slip of a boiler; 30 TAC §122.143(4), FOP Number O-02327, STC 18, and THSC, §382.085(b), by failing to document the parts washer monthly inspections; 30 TAC §115.782(c)(1)(B)(iii) and THSC, §382.085(b), by failing to perform extraordinary repair attempts to leaking valves; and 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to make an entry on the flare visible emissions log; PENALTY: $337,695; Supplemental Environmental Project (SEP) offset amount of $168,847 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: J. H. Strain & Sons, Inc.; DOCKET NUMBER: 2008-0065-AIR-E; IDENTIFIER: RN102980539; LOCATION: Taylor County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULE VIOLATED: 30 TAC §116.115(b)(2) and §116.615(9), Standard Permit Registration Number 72637L002, and THSC, §382.085(b), by failing to maintain all air pollution emission capture and abatement equipment in good working order; PENALTY: $800; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(13) COMPANY: Kerr Materials, L.P.; DOCKET NUMBER: 2007-1963-WQ-E; IDENTIFIER: RN105376560; LOCATION: Fayette County, Texas; TYPE OF FACILITY: sand and gravel mine; RULE VIOLATED: 30 TAC §281.25(a)(4) and the Code, §26.121, by failing to obtain authorization under a TPDES Multi-Sector General Permit prior to discharging co-mingled storm water and process water associated with industrial activities off the property; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(14) COMPANY: Dave Singh dba Lake Stop Store; DOCKET NUMBER: 2008-0170-PST-E; IDENTIFIER: RN102245594; LOCATION: Bosque County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL

OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Laredo Paving, Inc.; DOCKET NUMBER: 2007-1769-AIR-E; IDENTIFIER: RN105354427; LOCATION: Tom Green County, Texas; TYPE OF FACILITY: rock crushing system; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a new site which emits contaminants into the air of the state; PENALTY: $60,000; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(16) COMPANY: Lone Star Industries, Inc. dba Buzzi Unichem USA; DOCKET NUMBER: 2007-1719-AIR-E; IDENTIFIER: RN100220847; LOCATION: Maryneal, Nolan County, Texas; TYPE OF FACILITY: portland cement manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(2), 113.690, and 116.115(c), NSR Air Permit Number 5918B, SC 1, 40 CFR §63.1343(b)(1) and (b)(3)(i), and THSC, §382.085(b), by failing to comply with the emissions limits for particulate matter and dioxin/furan; PENALTY: $7,400; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: Midland Village Car Wash, Inc. dba Village East Express Wash & Lube and Midland Village Car Wash, Inc. dba Village Car Wash & Express Lube; DOCKET NUMBER: 2007-1771-PST-E; IDENTIFIER: RN100528058 and RN101432763; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: car washes; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(18) COMPANY: RK Petroleum Corporation; DOCKET NUMBER: 2007-2026-AIR-E; IDENTIFIER: RN100216795; LOCATION: Martin County, Texas; TYPE OF FACILITY: oil and gas collection and separation plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a permit compliance certification; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(19) COMPANY: Sand Ridge Energy, Inc.; DOCKET NUMBER: 2008-0169-WQ-E; IDENTIFIER: RN105338313; LOCATION: Pecos County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(20) COMPANY: Sealy Concrete, Inc.; DOCKET NUMBER: 2007-1847-IWD-E; IDENTIFIER: RN100241579; LOCATION: Sealy, Austin County, Texas; TYPE OF FACILITY: ready-mix concrete manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110293, Part I and II, Section A, and the Code, §26.121(a), by failing to comply with the permitted eligible discharge limitations for total suspended solids (TSS) and oil and grease; PENALTY: $4,750; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-1141-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §117.206(e)(1)(B) (now 30 TAC §117.310(c)(1)), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to comply with emission limits; 30 TAC §117.520(c)(2)(C)(i) (now 30 TAC §117.9020(2)(C)(i)), and THSC, §382.085(b), by failing to submit the reference method stack test report; and 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to comply with the 0.24 lb/hr CO emissions limits; PENALTY: $33,250; Supplemental Environmental Project (SEP) offset amount of $13,300 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-1993-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,575; Supplemental Environmental Project (SEP) offset amount of $2,630 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: The Aermotor Company; DOCKET NUMBER: 2008-0168-WQ-E; IDENTIFIER: RN101637676; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(24) COMPANY: Town of Van Horn; DOCKET NUMBER: 2007-1856-MWD-E; IDENTIFIER: RN103014999; LOCATION: Culberson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014241001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for five-day biochemical oxygen demand and TSS; PENALTY: $2,900; Supplemental Environmental Project (SEP) offset amount of $2,320 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(25) COMPANY: Wolf Hollow I, L.P.; DOCKET NUMBER: 2007-1802-IWD-E; IDENTIFIER: RN100219195; LOCATION: Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004288000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS, oil and grease, and total chlorine; and 30 TAC §305.125(17) and TPDES Permit Number WQ0004288000, Monitoring and Reporting Requirements Number 1,

by failing to submit the discharge monitoring report parameter data as specified in the permit; PENALTY: $17,160; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200801264
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 3, 2008

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Notice of Public Hearing on Proposed Repeal of 30 TAC Chapter 317 and Proposed New 30 TAC Chapter 217

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed repeal of 30 TAC Chapter 317 - Design Criteria for Sewerage Systems, and proposed new 30 TAC Chapter 217 - Design Criteria for Domestic Wastewater Systems.

The proposed rulemaking would update the standards for wastewater collection systems and treatment facilities and move the design criteria from the 300 chapter series to the 200 chapter series.

The commission will hold a public hearing on this proposal in Austin April 10, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2006-044-217-PR. The comment period closes April 14, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Sherry Smith, Rule Project Manager, Water Quality Division, (512) 239-0571 or Louis C. Herrin, III, P.E., Rule Technical Manager, Water Quality Division, (512) 239-4552.

TRD-200801198
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 29, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 50, 55, 305 and 330

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 50 - Action on Applications and Other Authorizations, Chapter 55 - Requests for Reconsideration and Contested Case Hearings; Public Comment, Chapter 305 - Consolidated Permits, and Chapter 331 - Underground Injection Control.

The proposed rulemaking would implement House Bill (HB) 2654, 80th Legislature, 2007, Regular Session, and amend technical standards for injection wells injecting nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals. HB 2654 allows the commission to issue a general permit to authorize a Class I injection well for injection of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals. HB 2654 also authorizes the use of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without first obtaining a permit from the TCEQ. The technical standards for wells injecting nonhazardous desalination concentrate or nonhazardous water treatment residuals from public water systems are amended to be consistent with federal Class I nonhazardous injection well regulations.

The commission will hold a public hearing on this proposal in Austin on April 8, 2008, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-030-331-PR. The comment period closes April 14, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ms. Kathryn Hoffman, Industrial and Hazardous Waste Permits Section, (512) 239-6890.

TRD-200801188
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 29, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of February 21, 2008 through February 28, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

LA JOYA WATER SUPPLY CORPORATION which proposes to operate Bentsen Palm Reverse Osmosis Water Treatment Plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004837000, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 432,000 gallons per day via Outfall 001. The facility is located approximately 2 miles south on Bentsen Palm Drive (FM 2062), off U.S. Highway 83 in Palmview City, Hidalgo County, Texas.

LUCE BAYOU PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011167001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located 3.5 miles north of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 2100 at a point 2 miles north of Huffman in Harris County, Texas.

NADIJA BALABAN SULYUKMANOV AND ALBERT F SULYUKMANOV has applied for a renewal of TPDES Permit No. WQ0013749001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 9135 Airline Drive, approximately 400 feet south of Halls Bayou and approximately 400 feet west of Airline Drive in Harris County, Texas.

NATIONAL OILWELL VARCO LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. WQ0014813001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 13,500 gallons per day via non-public access subsurface low pressure dosing drainfields with a minimum area of 178,560 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 11659 US Highway 60, Pampa, Texas, approximately five miles west of the City of Pampa in Gray County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 83 has applied for a renewal of TPDES Permit No. WQ0014482001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4,800 feet west-northwest of the intersection of Northpark Drive and U.S. Highway 59 and approximately 600 feet north of Morton Road in Montgomery County, Texas.

SOUTHWEST INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. WQ0014786001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 per day via non-public access subsurface low pressure dosing drainfields with a minimum area of 100,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located on the west side of Pearsall Road, approximately 2000 feet west of the intersection of Pearsall Road and Shepherd Road, northeast of the City of Atascosa in Bexar County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801314
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 5, 2008

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Notice of Water Rights Applications

Notices issued February 27 through February 28, 2008.

APPLICATION NO. 12-4060A; Durham Overstreet Trust, 9931 Allison Ct., Lipan, TX 76462; Overstreet Family L.P., 200 Bahama Ct., Granbury, TX 76048; The Shores of Granbury Inc., 200 Bahama Ct., Granbury, TX 76048; Durham Phillips Trust, 200 Bahama Ct., Granbury, TX 76048 and Overstreet Properties L.P., 200 Bahama Ct., Granbury, TX 76048, Applicants, have applied to amend a portion of Certificate of Adjudication No. 4060 to establish a diversion point adjacent to Lake Granbury above De Cordova Bend Dam and add municipal and industrial purposes within Hood County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on July 10, 2007. Additional information and fees were received on September 26, 2007, October 29, 2007, November 7, 2007 and January 14, 2008. The application was accepted for filing and declared administratively complete on November 28, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-1891A; Lower Colorado River Authority (LCRA), 3700 Lake Austin Blvd, Austin, Texas 78703 and Joe Rogan Miller, P.O. BOX 603, San Saba, Texas 76877, Applicants, have applied for an amendment to Certificate of Adjudication No. 14-1891 to add a downstream diversion point on the Colorado River, Colorado River Basin; to add municipal purposes of use to 117.5 acre-feet of water per year; to add authorization to impound and store the 117.5 acre-feet of water per year in Lometa Reservoir authorized by Water Use Permit No. 5715, for subsequent diversion and use; and to add a place of use being the service area of the Lometa Water System, which serves the City of Lometa and rural areas in the Lampasas, Mills, San Saba, and Burnet Counties. More information on the application and how to participate in the permitting process is given below. The application and a portion of the fees were received on May 4, 2007. Additional information and fees were received on July 6, 2007 and October 25, 2007. The application was accepted for filing and declared administratively complete on November 30, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-2567A; Lower Colorado River Authority (LCRA), 3700 Lake Austin Blvd, Austin, Texas 78703 and Richard Turner Miller, 414 East Wallace, San Saba, Texas 76877, Applicants, have applied for an amendment to Certificate of Adjudication No. 14-2567 to add a downstream diversion point on the Colorado River, Colorado River Basin, to add municipal purposes of use to 70 acre-feet of water; to add authorization to impound and store the 70 acre-feet of water in Lometa Reservoir authorized by Water Use Permit No. 5715, for subsequent diversion and use; and to add a place of use being the service area of the Lometa Water System, which serves the City of Lometa and rural areas in the Lampasas, Mills, San Saba, and Burnet Counties. More information on the application and how to participate in the permitting process is given below. The application and a portion of the fees were received on May 4, 2007. Additional information and fees were received on July 6, 2007 and October 25, 2007. The application was accepted for filing and declared administratively complete on November 30, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801315
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 5, 2008

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for one Lung Volume Reduction procedure code with two types of service (TOS). These changes are associated with Medicaid medical policy changes. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed rates are for one Lung Volume Reduction procedure code with two TOS (TOS 2: surgery service and TOS 8: assistant surgery service). These proposed rates affect payments made to physicians and certain other practitioners. The payment rates are proposed to be effective April 1, 2008.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, including surgery and assistant surgery services.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200801284
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 3, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive public comment on proposed Medicaid payment rates for 143 specific eye surgery procedure codes with two types of service (TOS). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code, §32.0282 and Texas Administrative Code (TAC), Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The payment rates are for 143 eye surgery procedure codes with two TOS (TOS 2: surgery service and TOS 8: assistant surgery service). These proposed rates affect payments made to physicians and certain other practitioners. The payment rates are proposed to be retroactively effective September 1, 2007.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, including surgery and assistant surgery services.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by

contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200801287
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 4, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive public comment on proposed Medicaid payment rates for clinical laboratory procedure codes with one type of service (TOS). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code, §32.0282 and Texas Administrative Code (TAC), Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed rates are for all Clinical Laboratory procedure codes covered by the Texas Medicaid Program, with one TOS (TOS 5: Laboratory service). The proposed payment rates affect payments made to physicians, certain other practitioners, and clinical laboratory providers. The payment rates are proposed to be effective April 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory procedure codes.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200801288
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 4, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive public comment on one proposed Medicaid payment rate for the following specific procedure code for physician-administered drugs and biologicals. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rate is for the injection 1-J0135, Adalimumab. The proposed effective date is April 1, 2008.

Methodology and justification. The proposed payment rate is calculated in accordance with 1 TAC §355.8085, which addresses the Reimbursement Rates for Physicians and Certain Other Practitioners and requires HHSC to review the fees for individual services at least every two years and the specific fee guidelines published in Section 2.2.1.2 of the 2008 Texas Medicaid Provider Procedures Manual.

Briefing Package. A briefing package describing the proposed payment rate will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu at (512) 491-1358 by March 26, 2008, so appropriate arrangements can be made.

TRD-200801305
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 5, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive

public comment on three proposed Medicaid payment rates for specific procedure codes for physician-administered drugs and biologicals. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are for 9-A9542, Radioimmunotherapy; and Radiopharmaceuticals 9-A9544 and 9-A9545. The proposed effective date is April 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the Reimbursement Rates for Physicians and Certain Other Practitioners and requires HHSC to review the fees for individual services at least every two years; and the specific fee guidelines published in Section 2.2.1.2 of the 2008 Texas Medicaid Provider Procedures Manual.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu at (512) 491-1358 by March 26, 2008, so appropriate arrangements can be made.

TRD-200801306
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 5, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive public comment on one proposed Medicaid payment rate for one specific procedure code for durable medical equipment (DME). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rate is for wearable cardiac defibrillator 9/L-K0606. The proposed effective date is April 1, 2008.

Methodology and justification. The proposed payment rate is calculated in accordance with 1 TAC §355.8021, which addresses the Reimbursement Rates for Home Health Services; and the specific fee guidelines published in Section 2.2.1 of the 2008 Texas Medicaid Provider Procedures Manual.

Briefing Package. A briefing package describing the proposed payment rate will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu at (512) 491-1358 by March 26, 2008, so appropriate arrangements can be made.

TRD-200801308
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 5, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 31, 2008, at 1:30 p.m. to receive public comment on two proposed Medicaid payment rates for the following specific procedure codes for durable medical equipment (DME). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are for non-programmable implantable infusion pump 9/J-E0782 and programmable infusion pump 9/J-E0783. The proposed effective date is April 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8021, which addresses the Reimbursement Rates for Home Health Services; and the specific fee guidelines published in Section 2.2.1 of the 2008 Texas Medicaid Provider Procedures Manual.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu at (512) 491-1358 by March 26, 2008, so appropriate arrangements can be made.

TRD-200801313
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 5, 2008

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Notice of Hearing on Proposed Provider Payment Rate Methodology

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public rate hearing to receive public comment on one proposed payment rate for reconstruction of polydactylous digit, soft tissue and bone provided by Ambulatory Surgical Centers (ASC) and Hospital Ambulatory Surgical Centers (HASC) services. HHSC is responsible for the reimbursement determination functions for the Texas Medicaid Program. The rate hearing will be held on Wednesday, March 26, 2008, at 9:00 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §§355.201(e) - (f) and Chapter 32 of the Human Resources Code, §32.0282, which require public hearings on proposed payment rates for medical assistance programs.

Proposal. The proposed rate is for HCPCS code 26587 for type of service F. This affects payments made to ASCs and HASCs. The proposed payment rate will be effective May 1, 2008.

Methodology and justification. The proposed rate was determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.8121, which addresses the reimbursement methodology for ASCs and HASCs.

Written Comments. Written comments regarding the proposed reimbursement rate may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Amber Lovett, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by email to amber.lovett@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Lovett, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Lovett at (512) 491-1998.

Briefing Package. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate by contacting Ms. Lovett at (512) 491-1371, or by email to amber.lovett@hhsc.state.tx.us, or HHSC Rate Analysis, MC H-400 P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu at (512) 491-1358 by March 24, 2008, so appropriate arrangements can be made.

TRD-200801318
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 5, 2008

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Texas Oncology Pa DBA Texas Oncology Cancer Ctr-Amarillo	L06149	Amarillo	00	02/25/08
Cedar Park	Cedar Park Health System LP DBA Cedar Park Regional Medical Center	L06140	Cedar Park	00	02/14/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	95	02/28/08
Austin	ARA Imaging	L05862	Austin	27	02/26/08
Austin	St Davids Healthcare Partnership LP LLP DBA St Davids Medical Center	L00740	Austin	100	02/26/08
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	74	02/21/08
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	26	02/20/08
Austin	Texas Oncology PA South Austin Cancer Center	L05108	Austin	18	02/25/08
Austin	Austin Heart PA	L04623	Austin	52	02/22/08
Austin	Cardinal Health	L02117	Austin	83	02/20/08
Austin	Austin Heart PA	L04623	Austin	51	02/20/08
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	77	02/14/08
Austin	Genexpress Informatics Inc	L05826	Austin	03	02/21/08
Austin	Kleinfelder	L01351	Austin	57	02/25/08
Beasley	Hudson Products Corporation	L02370	Beasley	48	02/21/08
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	111	02/25/08
Beaumont	Applied Standards Inspection Inc	L03072	Beaumont	101	02/19/08
Beaumont	Metalforms Inc	L02261	Beaumont	38	02/21/08
College Station	NDE Solutions LLC	L05879	College Station	14	02/19/08
Corpus Christi	Equistar Chemicals LP Corpus Christi Plant	L02447	Corpus Christi	21	02/26/08
Corpus Christi	Wilson Inspection X-ray Services Inc	L04469	Corpus Christi	59	02/19/08
Corpus Christi	N-Spec Quality Services Inc	L05113	Corpus Christi	30	02/19/08
Corsicana	Guardian Industries Corporation	L05213	Corsicana	04	02/19/08
Crowley	National Inspection Services LLC	L05930	Crowley	17	02/21/08
Dallas	Dallas Cardiology Associates PA DBA Heartplace-Charlton Methodist	L05541	Dallas	06	02/22/08
Dallas	PETNET Solutions Inc	L05193	Dallas	34	02/15/08
Deer Park	Hexion Specialty Chemicals Inc	L05323	Deer Park	04	02/25/08
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	18	02/19/08
Fort Worth	Weatherford International Inc	L00747	Fort Worth	81	02/26/08
Freeport	Brazos Pipe & Steel Fabricators Inc	L02186	Freeport	28	02/21/08
Galena Park	United States Gypsum Company	L03896	Galena Park	10	02/25/08
Galveston	The University of Texas Medical Branch Office of Environmental Health and Safety	L01299	Galveston	76	02/26/08
Gonzales	K14U Inc	L05515	Gonzales	05	02/26/08
Grand Prairie	Richemont North America Inc	L05047	Grand Prairie	09	02/22/08
Harlingen	Valley Diagnostic Clinic PA	L02933	Harlingen	32	02/22/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Henderson	Henderson Memorial Hospital	L03466	Henderson	22	02/25/08
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	40	02/28/08
Houston	The Methodist Hospital	L00457	Houston	156	02/28/08
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	33	02/28/08
Houston	Nuclear Imaging Services	L05775	Houston	38	02/26/08
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	35	02/29/08
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Ctr	L04452	Houston	46	02/26/08
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas	L05104	Houston	11	02/26/08
Houston	The Methodist Hospital	L00457	Houston	155	02/25/08
Houston	D-Arrow Inspection Inc	L03816	Houston	81	02/19/08
Houston	Tuboscope Vetco International Inc	L05302	Houston	04	02/26/08
Houston	Nuclear Imaging Services LP	L05791	Houston	06	02/14/08
Houston	J F Southwest Heart Clinic	L05963	Houston	02	02/15/08
Humble	Memorial Hermann Hospital Systems DBA Memorial Hermann Northeast	L02412	Humble	68	02/27/08
Katy	St Catherine Health and Wellness Center	L05310	Katy	15	02/15/08
Kingwood	Houston Physicians Medical Association PLLC DBA H P PET/CT Center	L05901	Kingwood	04	02/22/08
Longview	King Tool Company	L05142	Longview	10	02/19/08
Lubbock	Texas Tech University Health Sciences Ctr	L01869	Lubbock	85	02/26/08
Mansfield	FTI Industries Inc	L02810	Mansfield	15	02/21/08
Mauriceville	S & T International Inc	L03652	Mauriceville	37	02/21/08
McKinney	Raytheon Company	L05632	McKinney	04	02/25/08
Midland	Texas Oncology PA DBA Allison Cancer Center	L04905	Midland	11	02/26/08
Midland	T Bob Amthor Holdings LLC	L05964	Midland	01	02/14/08
Mineral Wells	Perry Equipment Corporation	L00330	Mineral Wells	40	02/19/08
Odessa	Black Warrior Wireline Corp	L04473	Odessa	25	02/26/08
Olden	Link Field Services Inc	L05383	Olden	22	02/19/08
Pampa	Mundy Maintenance and Services LLC	L04360	Pampa	32	02/19/08
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Tx Operations	L05237	Paris	18	02/21/08
Pasadena	Turner Specialty Services LLC	L05417	Pasadena	33	02/19/08
Port Arthur	S K Rao MD PA	L05415	Port Arthur	13	02/26/08
Richmond	Matrix Metals LLC DBA Richmond Foundry	L00312	Richmond	47	02/19/08
San Angelo	Shannon Clinic	L04216	San Angelo	42	02/26/08
San Angelo	Hirschfeld Steel Company	L04361	San Angelo	16	02/19/08
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	114	02/28/08
San Antonio	University of Texas at San Antonio Environmental Health Safety and Risk Mgmt	L01962	San Antonio	58	02/29/08
San Antonio	Diabetes and Glandular Disease Clinic PA	L02647	San Antonio	23	02/26/08
San Antonio	Alamo Feline Health Center PC	L05752	San Antonio	06	02/15/08
San Antonio	Southwest Research Institute	L04958	San Antonio	14	02/19/08
San Marcos	Central Texas Medical Center	L03133	San Marcos	23	02/25/08
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	30	02/26/08
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	18	02/22/08
South Houston	GCT Inspection Inc	L02378	South Houston	100	02/21/08
Sweeny	ConocoPhillips Company	L00337	Sweeny	51	02/25/08
Tatum	Luminant Mining Company LLC	L06081	Tatum	04	02/15/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Texarkana	Advanced Cardiology of Texarkana	L05976	Texarkana	01	02/26/08
Texas City	International Industrial Fab Inc	L04935	Texas City	24	02/19/08
The Woodlands	Memorial Hospital the Woodlands	L03772	The Woodlands	58	02/27/08
Throughout TX	Desert Industrial X-ray LP	L04590	Abilene	77	02/19/08
Throughout TX	Desert Industrial X-ray LP	L04590	Abilene	78	02/21/08
Throughout TX	Team Industrial Services Inc	L00087	Alvin	180	02/21/08
Throughout TX	Team Industrial Services Inc	L00087	Alvin	179	02/14/08
Throughout TX	Global X-ray & Testing Corp	L03663	Aransas Pass	106	02/21/08
Throughout TX	Baker Tank Company	L02599	Arp	26	02/21/08
Throughout TX	Radiation Technology Inc	L04633	Austin	25	02/26/08
Throughout TX	Texas Department of State Health Services Community Preparedness Section	L05865	Austin	05	02/26/08
Throughout TX	Reinhart and Associates Inc	L03189	Austin	43	02/21/08
Throughout TX	KXR Inspection Inc	L01074	Barker	106	02/21/08
Throughout TX	Gulf Coast Weld Spec	L05426	Beaumont	66	02/19/08
Throughout TX	Gulf Coast Weld Spec	L05426	Beaumont	67	02/25/08
Throughout TX	Brazos Valley Inspection Services Inc	L02859	Bryan	64	02/21/08
Throughout TX	Phoenix Non Destructive Testing Co	L04454	Channelview	52	02/19/08
Throughout TX	Tapco International Inc DBA Tapco Enpro International	L04990	Channelview	24	02/19/08
Throughout TX	Chappell Hill Logging Systems Inc	L05374	Chappell Hill	07	02/26/08
Throughout TX	NDE Solutions LLC	L05879	College Station	15	02/27/08
Throughout TX	Escot NDE Inc DBA Basin Industrial X-ray	L05002	Corpus Christi	26	02/19/08
Throughout TX	Berry Fabricators	L01575	Corpus Christi	53	02/19/08
Throughout TX	Wilson Inspection X-ray Services Inc	L04469	Corpus Christi	60	02/22/08
Throughout TX	IRISNDT Inc	L04769	Deer Park	49	02/19/08
Throughout TX	Littleton Inspection Services	L04835	Desoto	08	02/25/08
Throughout TX	H & H X-ray Services Inc	L02516	Flint	68	02/19/08
Throughout TX	H & H X-ray Services Inc	L02516	Flint	69	02/25/08
Throughout TX	Weatherford US LP	L05291	Fort Worth	19	02/26/08
Throughout TX	NDE Inc	L02355	Fort Worth	25	02/21/08
Throughout TX	Gray Wireline Service Inc	L03541	Fort Worth	26	02/26/08
Throughout TX	Probe Technology Services Inc	L05112	Fort Worth	19	02/26/08
Throughout TX	Weatherford International Inc	L04286	Fort Worth	74	02/26/08
Throughout TX	Freese and Nichols Inc	L04301	Fort Worth	16	02/25/08
Throughout TX	Gray Wireline Service Inc	L03541	Fort Worth	25	02/22/08
Throughout TX	Permian Nondestructive Testing Inc	L06001	Gardendale	07	02/26/08
Throughout TX	Bonded Inspections Inc	L00693	Garland	77	02/19/08
Throughout TX	Wedge Wireline Services Inc DBA Phoenix Surveys Inc	L04108	Graham	17	02/26/08
Throughout TX	Texas QA Services Inc	L04601	Grand Prairie	23	02/19/08
Throughout TX	General Inspection Services Inc	L02319	Hempstead	41	02/19/08
Throughout TX	Titan Testing and Engineering Services Inc	L05642	Houston	11	02/28/08
Throughout TX	QC Laboratories Inc	L05956	Houston	05	02/21/08
Throughout TX	Thrubit LLC	L06030	Houston	03	02/28/08
Throughout TX	Varco LP FKA Tuboscope Vetco	L00287	Houston	122	02/26/08
Throughout TX	Professional Service Industries Inc	L00203	Houston	123	02/21/08
Throughout TX	Radiographic Specialists Inc	L02742	Houston	57	02/21/08
Throughout TX	Halliburton Energy Services Inc	L00442	Houston	113	02/21/08
Throughout TX	Material Inspection Technology Inc	L05672	Houston	25	02/19/08
Throughout TX	PACS Construction Laboratories and Testing Laboratories	L05776	Houston	02	02/26/08
Throughout TX	Industrial Nuclear Company	L04508	Houston	07	02/19/08
Throughout TX	Allied Testing Laboratories Inc	L00880	Houston	44	02/21/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Halliburton Energy Services Inc	L03284	Houston	33	02/26/08
Throughout TX	Baker Hughes Oilfield Operations Inc DBA Baker Atlas	L00446	Houston	161	02/26/08
Throughout TX	Wood Group Logging Services Inc	L05262	Houston	26	02/26/08
Throughout TX	METCO	L03018	Houston	182	02/19/08
Throughout TX	Stork Southwestern Laboratories Inc	L00299	Houston	132	02/19/08
Throughout TX	Weldsonix Inc	L05718	Houston	34	02/21/08
Throughout TX	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	221	02/21/08
Throughout TX	RTD Pipeline Services USA LP	L05985	Houston	06	02/21/08
Throughout TX	Petrochem Inspection Services Inc	L04460	Houston	83	02/19/08
Throughout TX	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L02991	Houston	36	02/26/08
Throughout TX	Pathfinder Energy Services Inc	L05236	Houston	16	02/26/08
Throughout TX	Halliburton Energy Services Inc	L02113	Houston	110	02/26/08
Throughout TX	P L P S Inc	L04955	Houston	07	02/26/08
Throughout TX	Mandes Inspection & Testing Services Inc	L05220	Houston	60	02/19/08
Throughout TX	Testmasters Inc	L03651	Houston	28	02/21/08
Throughout TX	Goolsby Testing Laboratories Inc	L03115	Humble	91	02/19/08
Throughout TX	Oceaneering International Inc Solus Schall Division	L04463	Ingleside	54	02/20/08
Throughout TX	Oceaneering International Inc Solus Schall Division	L04463	Ingleside	55	02/21/08
Throughout TX	Perf-O-Log Inc	L05478	Iowa Colony	18	02/26/08
Throughout TX	Marco Inspection Services LLC	L06072	Kilgore	10	02/26/08
Throughout TX	Marco Inspection Services LLC	L06072	Kilgore	08	02/14/08
Throughout TX	Marco Inspection Services LLC	L06072	Kilgore	09	02/21/08
Throughout TX	Acuren Inspection Inc	L01774	La Porte	241	02/19/08
Throughout TX	Southern Services Inc DBA Southern Technical Services DBA BIX Testing Laboratories	L05270	Lake Jackson	49	02/19/08
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	137	02/21/08
Throughout TX	Master Industries Inc	L05872	Liberty	15	02/21/08
Throughout TX	Hi-Tech Testing Service Inc	L05021	Longview	68	02/19/08
Throughout TX	Hi-Tech Testing Service Inc	L05021	Longview	67	02/14/08
Throughout TX	Capitan Corporation	L05824	Midland	05	02/26/08
Throughout TX	Enertech Wireline Services LP	L05738	Midland	12	02/26/08
Throughout TX	American X-ray & Inspection Services Inc DBA A X I S Inc	L05974	Midland	09	02/21/08
Throughout TX	Eagle X-ray	L03246	Mont Belvieu	96	02/21/08
Throughout TX	Anatec Texas Inc	L04865	Nederland	76	02/19/08
Throughout TX	Big State X-ray	L02693	Odessa	66	02/21/08
Throughout TX	Pro Inspection Inc	L03906	Odessa	20	02/21/08
Throughout TX	Sivalls Inc	L02298	Odessa	37	02/21/08
Throughout TX	T C Inspection Inc	L05833	Oyster Creek	29	02/21/08
Throughout TX	Turner Industries Group LLC DBA Pipe Fabrications Division Tx Operations	L05237	Paris	19	02/26/08
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	138	02/19/08
Throughout TX	Fugro Consultants LP	L04322	Pasadena	92	02/19/08
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	81	02/21/08
Throughout TX	Techcorr USA LLC	L05972	Pasadena	44	02/21/08
Throughout TX	NDS Products Inc	L00991	Pasadena	45	02/26/08
Throughout TX	Techcorr USA LLC	L05972	Pasadena	43	02/19/08
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	139	02/25/08
Throughout TX	Midwest Inspection Services	L03120	Perryton	104	02/21/08
Throughout TX	Century Inspection Inc	L00062	Ponder	106	02/19/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Catch A Fault	L02725	Ponder	22	02/21/08
Throughout TX	PHC Wireline Inc DBA PSI Wireline	L05911	San Angelo	03	02/26/08
Throughout TX	All American Inspection Inc	L01336	San Antonio	63	02/26/08
Throughout TX	Southwest Research Institute	L00775	San Antonio	78	02/21/08
Throughout TX	IHI Southwest Technologies Inc	L05279	San Antonio	07	02/19/08
Throughout TX	Ruiz Testing Services Inc	L04948	San Antonio	18	02/19/08
Throughout TX	All American Inspection Inc	L01336	San Antonio	62	02/21/08
Throughout TX	Weaver Services Inc DBA WSI Cased Hole Specialist	L01489	Snyder	32	02/26/08
Throughout TX	Thermo Measuretech	L03524	Sugar Land	76	02/26/08
Throughout TX	Schlumberger Technology Corporation	L00109	Sugar Land	54	02/26/08
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	106	02/26/08
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	145	02/26/08
Throughout TX	Ludlum Measurements Inc	L01963	Sweetwater	79	02/26/08
Throughout TX	Blazer Inspection Inc	L04619	Texas City	51	02/19/08
Throughout TX	Pharmafrontiers Corp	L05592	The Woodlands	08	02/26/08
Throughout TX	Lamco & Associate	L05152	The Woodlands	09	02/19/08
Throughout TX	BJ Services Company USA	L02684	Tomball	58	02/26/08
Throughout TX	K & N Perforators Inc	L02300	Victoria	30	02/26/08
Throughout TX	STP Nuclear Operating Company	L04222	Wadsworth	23	02/21/08
Tyler	Trinity Mother Frances Health System	L01670	Tyler	133	02/22/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Texas Commission on Environmental Quality	L01715	Austin	40	02/21/08
Dallas	Retina Foundation of the Southwest	L05528	Dallas	04	02/08/08
Pasadena	E+PET Imaging XVII LP PET Imaging of Houston Southeast	L05891	Pasadena	03	02/27/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200801286
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 4, 2008

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Texas Higher Education Coordinating Board

Request for Proposals for Evaluation of "Gates GO Center Partnership" Program

Notice Requesting proposals from applicants to facilitate the process of conducting an evaluation of Gates Go Center Partnership program.

PURPOSE: To solicit proposals from qualified applicants to conduct a program evaluation of Gates GO Center Partnership program

DEADLINE FOR TRANSMITTAL OF PROPOSALS: March 28, 2008, 5:00 p.m. C.S.T.

DEADLINE FOR INTENT TO APPLY: March 14, 2008, 5:00 p.m. C.S.T.

RFP AVAILABLE: March 4, 2008

ESTIMATED NUMBER OF AWARDS: 1

PROJECT PERIOD: two-year project

BUDGET PERIOD: 24 Months

APPLICABLE REGULATIONS:

For more information, go to the THECB website http://www.thecb.state.tx.us/reports/PDF/1462.PDF

For proposal templates, go to the THECB website http://www.thecb.state.tx.us/reports/DOC/1463.DOC

TRD-200801304
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: March 5, 2008

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PACIFIC SECURED EQUITIES, INC., (using the assumed name of INTERCARE INSURANCE SERVICES, INC.) a foreign third party administrator. The home office is LOS ANGELES, CALIFORNIA.

Application of ARGONAUT CLAIM SERVICES, LTD, a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application to change the name of FOUNDATION HEALTH PREFERRED ADMINISTRATORS (using the assumed name of FOUNDATION HEALTH PREFERRED ADMINISTRATORS, INC.) to CAPITOL ADMINISTRATORS, INC., a foreign third party administrator. The home office is RANCHO CORDOVA, CALIFORNIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200801316
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 5, 2008

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Lower Rio Grande Valley Development Council

Request for Qualifications for Bookkeeping/Accounting Services

Hidalgo County Regional Mobililty Authority

The Hidalgo County Regional Mobility Authority (the "Authority") hereby issues this Request for Qualifications (the "RFQ") for an entity or individual to provide assistance in maintaining and managing certain financial records and preparing certain financial reports for the Authority.

The Authority receives funds from distinct sources which are allocated to specific projects. In general, there is a prohibition against co-mingling such funds. Additionally, the funding sources have differing requirements for reporting. The successful Respondent must be able to coordinate various Authority accounts and allocate expenditures and investment income appropriately. Experience in managing state and federal grants would be useful.

The Authority is underway with its initial project, the Hidalgo County Loop Project. This is a $600 million project (through phasing, this amount will be broken into significantly smaller portions).

Section 1. Eligible Respondents

The Respondent may be (or include) a certified public accountant ("CPA") in good standing with the State of Texas Board of Public Accountants, but is not required to be. The Authority encourages historically underutilized businesses ("HUB") to compete for this award.

Section 2. Response Requirements

A. Information Sheet

The response submission must include an Information Sheet that clearly states: the name of the Respondent and the name, address, and telephone number of the Respondent's point of contact. This Information Sheet should also note the RFQ title and will be the first page before the sealed response submission.

B. Response Contents

Responses must include the content outlined below. Responses must include a table of contents and all pages of the Response must be numbered.

1. Qualifications

Respondents must demonstrate experience in providing bookkeeping and accounting services to government entities. For each person a Respondent identifies to perform the work described in this RFQ, please provide a detailed resume that describes the services they would perform, their qualifications, and their experience.

2. Competence and Knowledge

Each Respondent must demonstrate competence and knowledge of the following areas:

* Generally Accepted Accounting Principals (GAAP);

* Generally accepted auditing standards applicable to government units as promulgated by the American Institute of Certified Public Accounts;

* Standards promulgated by the Government Accounting Standards Board; and

* Relevant federal and state statutes.

3. References

Each Respondent must provide three letters of reference, including contact information. The Authority prefers references from clients for whom the Respondent has performed similar work.

4. Compensation

Compensation for the bookkeeping/accounting services will be based on an hourly fee. Payments will be made based on the invoicing and

payment terms of the contract. Each Response should include an anticipated schedule of hours required to perform the services outlined herein.

5. Conflicts of Interest

Respondents must identify any personal or business relationships with any member of the Authority's Board of Directors. If a Respondent does not have any known or potential conflict of interest, the Response should include such as statement.

6. Historically Underutilized Business Certification

If the Respondent is a HUB, the Respondent is requested to submit a copy of its HUB certificate.

Section 3. Conditions

All responses become the property of the Authority. The Authority will not return responses after they are received. The Authority reserves the right to amend or cancel this RFQ at any time and to reject any and all responses. The Authority will not reimburse any Respondent for costs related to preparing a response to this RFQ. The Authority may request Respondents to provide an oral presentation or additional information. The Authority reserves the right to negotiate all or portions of any response tentatively selected for award, including the proposed compensation.

Respondents acknowledge that any response may be withdrawn, in writing, before the deadline for receipt of responses. Respondents further agree that any response that is not withdrawn shall constitute an irrevocable offer for a period of 90 days from the RFQ closing date.

Section 4. Contract Term

The contract performance period will begin on or about March 1, 2008 and expire on or about April 30, 2008. The parties may agree to renew the contract for an additional year.

Section 5. Questions

Questions with regard to this RFQ should be directed to Victor Morales at the Lower Rio Grande Valley Development Council at vmorales@lrgvdc.org. Mr. Morales is the only permitted point of contact.

Section 6. Submission of Proposals

Respondents must submit their responses before 4:00 p.m., April 18, 2008. Fax or email responses will not be accepted.

Responses should be submitted to:

HCRMA RFQ for Bookkeeping/Accounting Services

Lower Rio Grande Valley Development Council

Attention: Victor Morales

311 N. 15th Street

McAllen, Texas 78501-4705

TRD-200801240
Kenneth N. Jones
Executive Director
Lower Rio Grande Valley Development Council
Filed: February 29, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 29, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Charter Communications VI, L.L.C. d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35410 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City of Fulton, Texas. The application also requests amendments to fax number and e-mail addresses for authorized representative, regulatory contact and emergency contacts.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35410.

TRD-200801299
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 27, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Connect Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35408 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 19, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35408.

TRD-200801296
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2008

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Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on February 26, 2008 with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(B).

Docket Style and Number: Application of Eastex Telecom Investments, L.P. d/b/a Eastex Long Distance for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f)(3)(B). Docket Number 35405.

The Application: Eastex is a new provider of long distance telephone service in Texas and is registered as an interexchange carrier with the commission. Eastex states that it has elected to use the safe-harbor percentage approved by the commission for its classification of service provided and will be submitting its compliance tariff in to reflect the safe-harbor methodology. Eastex requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Eastex to use the commission-ordered safe-harbor Texas Universal Service Fund (TUSF) assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 24, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35405.

TRD-200801298
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2008

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 26, 2008, for waiver of denial by the Pooling Administrator (PA) of ICG ChoiceCom LP d/b/a Tel West Network Services' request for a new NPA-NXX in the Dallas rate center.

Docket Title and Number: Petition of ICG ChoiceCom LP d/b/a Tel West Network Services for Waiver of Denial of Numbering Resources, Docket Number 35404.

The Application: ICG ChoiceCom LP d/b/a Tel West Network Services submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because ICG ChoiceCom LP d/b/a Tel West Network Services did not meet the month-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 19, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35404.

TRD-200801297
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2008

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Hamlin, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Hamlin. TxDOT CSJ No. 0708HAMLN. Scope: Provide engineering/design services to: rehabilitate and mark RW 16-34; rehabilitate and mark stub TW; reconstruct and enlarge turnaround RW 16 end; rehabilitate apron and improve drainage.

The HUB goal is set at 7%. TxDOT Project Manager is Alan Schmidt, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent airport layout plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Hamlin Municipal Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than April 7, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Delia L. Molina.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please

contact Delia Lopez Molina, Grant Manager. For technical questions, please contact Alan Schmidt, Project Manager.

TRD-200801302
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 5, 2008

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Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Giddings and Lee County, through their agent the Texas Department of Transportation (TxDOT), intend to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Giddings-Lee County Airport during the course of the next five years through multiple grants.

Current Project: City of Giddings and Lee County. TxDOT CSJ No.: 0814GIDNG. Scope: Provide engineering/design services to install PAPI-2 RW 17-35.

There is no DBE goal. TxDOT Project Manager is Alan Schmidt.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate/reconstruct, and stripe and mark RW 17/35, apron, and hangar access and stub taxiways

2. Repair bumps in runway

3. Improve drainage on apron

4. Install segmented circle

5. Relocate property line fencing

6. Pave auto parking

7. Relocate entrance road

The City of Giddings and Lee County reserve the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Giddings-Lee County Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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Please note:

Eight completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than April 7, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Delia Lopez Molina.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Delia Lopez Molina, Grant Manager. For technical questions, please contact Alan Schmidt, Project Manager.

TRD-200801303
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 5, 2008

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Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Bowie, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering/design services described below:

Airport Sponsor: City of Bowie. TxDOT CSJ No. 08HGBOWIE. Scope: Provide engineering/design services for site development and associated appurtenances for a pre-engineered metal aircraft hangar building system at the Bowie Municipal Airport.

There is no DBE goal for this project. TxDOT Project Manager is Charles Graham.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent airport layout plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Bowie Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested

from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm.** The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **April 11, 2008, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm.** All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, at 1-800-68-PILOT, extension 4518. For technical questions, please contact Charles Graham, Project Manager, at 1-800-68-PILOT at extension 4549.

TRD-200801317
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 5, 2008

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The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services

The University of Texas Health Science Center at San Antonio Invitation No.: IFO #745-8-01

Background:

The University of Texas Health Science Center at San Antonio (University), one of the 15 institutions composing The University of Texas System, is a national and international leader in the biosciences. University is the only tier one research university in South Texas and is ranked among the top 10% of all research universities in the nation. University also has provided more than 100 active license agreements and 10 new spin-out companies, consistent with the Governor's vision of making Texas a powerhouse in biotechnology. Discoveries coming from University include the Palmaz Stent, one of the top ten patents that have changed the world which is used to treat over 2 million patients per year worldwide, and the Titanium Rib, the first new FDA-approved pediatric device in the past 40 years. University's annual expenditures of $500 million contribute in excess of $2 billion in positive economic impact to Texas yearly.

Pursuant to the provisions of *Texas Government Code*, Chapter 2254, University previously procured the consulting services of The Atkins Group (Atkins), to, among other things, provide branding (1) research and assessment, (2) planning and development, and (3) implementation services for University. Atkins is providing those services to University pursuant to a contract with University.

At this time, it is necessary to amend and extend the contract between University and Atkins. To remain competitive in the marketplace, including attracting new donors and attracting outstanding faculty and staff, new patients and students, it is important that University continue the implementation of its current branding strategy, including a communication and marketing plan to support University's missions. This branding strategy is integral to University's future success and especially important to accomplishing increased philanthropy and community awareness.

As required by the provisions of *Texas Government Code*, Chapter 2254, prior to amending and extending its contract with Atkins, University extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to University. Unless a better offer (as determined by University) is received in response to this Invitation, University intends to enter into negotiations with Atkins to amend and extend University's contract with Atkins.

Scope of Work:

The successful consultant will perform the following services: (1) continue the development of the branding architecture as it is to be seen throughout University's Web presence, from the University's home page, through all of the landing pages of the schools and departments, as well as all internal pages of the Web site; (2) continue the development of the branding architecture, as it is communicated within a style and usage guide, that will become an essential graphics manual to shepherd the implementation of the branding program throughout all schools, departments, campuses, and components of University, insuring the unified and cohesive representation of the new brand across our internal and external audiences; (3) continue the development of the branding architecture as it is conveyed within print pieces, (such as magazines, annual reports, brochures, and other communications and marketing collateral); and (4) continue the development of the brand program as it will be represented to various internal and external audiences via advertising campaigns, in various media, that will promote community education and awareness of University's missions, programs, practice-plan clinical care and services to the public.

Historically Underutilized Businesses:

All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (HUB) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this Invitation, the successful consultant subcontracts any of the services, then the successful consultant must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency. Offers that fail to comply with the requirements contained in this Section will constitute a material failure to comply with advertised specifications

and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this Invitation. Consultant acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the services will continue throughout the term of all agreements and contractual arrangements resulting from this Invitation. Furthermore, any subcontracting of the services by the successful consultant is subject to review by University to ensure compliance with the HUB program. University has reviewed this Invitation in accordance with Title 34, *Texas Administrative Code*, §20.13(a), and has determined that subcontracting opportunities are probable under this Invitation. A HUB Subcontracting Plan (HSP) is required as part of consultant's offer. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses. Each consultant must complete and return the HSP in accordance with the terms and conditions of this Invitation. Consultants that fail to do so will be considered non-responsive to this Invitation in accordance with §2161.252, *Texas Government Code*. The successful consultant will not be permitted to change its HSP unless: (1) the consultant completes a newly modified version of the HSP in accordance with the terms of the HSP that sets forth all changes requested by the consultant, (2) the consultant provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this Invitation are amended in writing by University and the consultant to conform to the modified HSP. Consultant must submit one (1) original of the HSP to University at the same time it submits its offer to University. The one (1) original of the HSP must be submitted under separate cover and in a separate envelope (the HSP Envelope). Consultant must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible: the Invitation No. and the Submittal Deadline, both located in the lower left hand corner of the top surface of the envelope, the name and the return address of consultant, and the phrase "HUB Subcontracting Plan".

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five (5) client references, including any complex institutions or systems of higher education for which consultant has provided consulting services; (7) a statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this Invitation), any unique benefits consultant offers University, and any other information consultant desires University to consider in connection with consultant's offer; (8) information to assist University in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist University in assessing the consultant's knowledge of the requested services; (10) information to assist University in assessing the consultant's awareness of the requested services; (11) information to assist University in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (12) information to assist University in assessing whether the consultant will be impartial in the performance of the requested services; (13) information to assist University in assessing whether the consultant will have any conflicts of interest in performing the requested services; (14) information to assist University in assessing the overall cost to University for the requested services to be performed; (15) information regarding any prompt payment discount offered by consultant (University's standard payment terms for services are "Net 30 days."); (16) information to assist University in assessing consultant's capability and financial resources to perform the requested services; (17) information to assist University in assessing consultant's communication skills using all relevant media; (18) a signed original of the Execution of Offer which may be obtained by contacting: Christelle Farias, Assistant Director of Purchasing, UTHSCSA, Purchasing Department, 8431 Fredericksburg Rd., Suite 200, San Antonio, Texas 78229, (210) 562-6202, fariasc@uthscsa.edu; and (19) a signed and completed original of the HUB Subcontracting Plan, which may be obtained by contacting: Christelle Farias, Assistant Director of Purchasing, UTHSCSA, Purchasing Department, 8431 Fredericksburg Rd., Suite 200, San Antonio, Texas 78229, (210) 562-6202, fariasc@uthscsa.edu.

Selection Process:

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive sealed proposal process described in this section. After opening of the offers and upon completion of the initial review and evaluation of the offers, University may invite one or more selected consultants to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of an offer prior to selection of the Successful Offer.

University may make the selection of the Successful Offer on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of the Successful Offer on the basis of negotiation with any of the consultants. In conducting such negotiations, University will avoid disclosing the contents of competing offers.

At University's sole option and discretion, University may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the offers, a competitive range of acceptable or potentially acceptable offers composed of the highest rated offer(s). In that event, University will defer further action on offers not included within the competitive range pending the selection of the Successful Offer; provided, however, University reserves the right to include additional offers in the competitive range if deemed to be in the best interests of University.

After submission of an offer but before final selection of the Successful Offer is made, University may permit a consultant to revise its offer in order to obtain the consultant's best and final offer. In that event, representations made by consultant in its revised offer, including price and fee quotes, will be binding on consultant. University will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. University is not obligated to select the consultant offering the most attractive economic terms if that consultant is not the most advantageous to University overall, as determined by University.

University reserves the right to: (a) enter into a contract for all or any portion of the requirements and specifications set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Consultant is hereby notified that University will maintain in its files concerning this Invitation a written record of the basis upon which a selection, if any, is made by University. University reserves the right to accept or reject any or all offers, waive any formalities,

procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this Invitation when deemed to be in University's best interest.

Criteria for Selection:

The successful offer (Successful Offer), if any, will be the offer submitted in response to this Invitation by the Submittal Deadline that is the most advantageous to University. The criteria to be considered by University in evaluating offers will be those factors listed below:

1. the consultant's demonstrated competence, knowledge, and qualifications; and

2. the reasonableness of the consultant's fee.

In accordance with Section 2254.027, *Texas Government Code*, if other considerations are equal, University will give preference to a consultant whose principal place of business is in the State of Texas or who will manage the contract wholly from an office in the State of Texas. Offers will be evaluated by University personnel. The selection of the Successful Offer, if any, will be based on the information provided by consultant in its offer. University may give consideration to any additional information if University deems such information relevant. The consultant submitting the Successful Offer will be required to enter into a contract acceptable to University.

Consultant's Acceptance of Offer Evaluation Methodology:

Submission of an offer by a consultant indicates: (1) consultant's acceptance of: (a) the Selection Process, (b) the Criteria for Selection, and (c) all other requirements and specifications set forth in this Invitation; and (2) consultant's recognition that some subjective judgments must be made by University during this Invitation process.

Public Information:

Consultant is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information. University may seek to protect from disclosure all information submitted in response to this Invitation until such time as a final contract is executed. Upon execution of a final contract, University will consider all information, documentation, and other materials requested to be submitted in response to this Invitation, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.). Consultant will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§552.101, 552.110, 552.113, and 552.131, *Texas Government Code*.

How to Respond; Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specifications section of this Invitation and any other relevant information, in a clear and concise written format to: Christelle Farias, Assistant Director of Purchasing, UTHSCSA, Purchasing Department, 8431 Fredericksburg Rd., Suite 200, San Antonio, Texas 78229.

Offers must be submitted in an envelope or other appropriate container. "Invitation No. IFO 745-8-01" and the Submittal Deadline must be clearly shown in the lower left-hand corner on the top surface of such envelope or container. In addition, the name and return address of the consultant must be clearly visible.

All offers must be received at the above address no later than 3:00 p.m., CDST, Thursday, April 24, 2008 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to Christelle Farias, Assistant Director of Purchasing, UTHSCSA, Purchasing Department, 8431 Fredericksburg Rd., Suite 200, San Antonio, Texas 78229, (210) 562-6202, fariasc@uthscsa.edu. University may in its sole discretion respond in writing to questions concerning this Invitation. Only University's responses made by formal written addenda to this Invitation will be binding. Verbal and other written interpretations or clarifications will be without legal effect.

TRD-200801266
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: March 3, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).